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# Right of Way Manual

Maine Department of Transportation

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# **Right of Way Manual**

MAINE DEPARTMENT OF TRANSPORTATION

*December 2010*

## PREFACE

This *Right of Way Manual* was developed to provide technical guidance to professionals in several fields who are responsible for delivering property rights to support the Maine Department of Transportation's transportation program. It complies with the Maine Statutes (MRSA) and Federal laws and regulations that control the process for acquiring private property rights for public purposes. As important, the *Manual* encourages sensitivity to the needs and concerns of citizens who are called on to relinquish property, and sometimes home or business, for the overall public good. **Right of way is not merely a financial transaction to acquire real estate. It is a human endeavor that requires the highest level of tact, understanding and respect from the people who represent the State of Maine in this activity. Persons who survey, appraise, acquire property and assist relocation, are aware that public trust and confidence in the highway program rests in high degree with the professionalism and skill they display in carrying out their work.** The *Manual* supports this understanding of the sensitivity and importance of the right of way process

The *Right of Way Manual* will be used not only by Department staff, but also by local agency personnel who acquire property for State funded projects, and by private service providers including contract appraisers, title professionals and acquisition specialists. The *Manual* addresses the specific topics of interest to each user, and also indicates the close relationships and interdependencies of the distinct right of way disciplines.

The *Right of Way Manual* is a living document that will change as controlling laws and regulations change, and more effective management practices develop. The text, headings and page numbering systems are designed to permit insertions or replacement of text without changing the basic structure of the *Manual* or replacement of full chapters or sections. The *Manual* is produced to permit traditional print publication as well as electronic publication.

The Property Office of the Project Development Bureau is responsible for continued maintenance and update of the *Manual*. Users are encouraged to advise the Director of the Property Office of need for corrections or provide suggestions that would improve the content of the *Manual*. Correspondence should be addressed to:

Maine Department of Transportation  
16 State House Station  
Augusta ME 04333-0016  
Attn: Director, Property Office



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# CHAPTER ONE

## ADMINISTRATION

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# CHAPTER ONE

## ADMINISTRATION

### 1-1 ADMINISTRATIVE OVERVIEW

Right of Way functions performed by the Maine Department of Transportation (MaineDOT) are the means by which real property is acquired for transportation programs and projects. The right of way program is administered to efficiently deliver real property for project construction while treating property owners and occupants fairly and equitably. **The Fifth Amendment to the US Constitution** provides that private property cannot “be taken for public use without payment of just compensation” to the owner. The Fourteenth Amendment to the US Constitution requires due process of law be accorded to private property owners before the taking of property by the governmental power of eminent domain.

**The Uniform Relocation Assistance and Real Property Acquisition Policies Act** of 1970, Title 42 **United States Code** Chapter 61 (**Uniform Act**), as amended, and its implementing regulations (49 **Code of Federal Regulations** Part 24) (**CFR**) interpret the legal meaning of the Federal constitutional provisions and define procedures for establishing just compensation and providing due process to property owners. These just compensation and due process requirements apply to all Federally-funded MaineDOT activities, including those carried out by local public agencies and some private parties. Additional provisions affecting right of way functions appear in Title 23 **United States Code**, Chapter 1. Article 1, Section 21 of the Maine Constitution and Title 23 of the **Maine Revised Statutes**, contain state equivalents of the Federal protections.

#### 1-1.01 Purpose and Use of the *Manual*

##### 1-1.01(a) Overview

The construction and operation of transportation projects frequently involve impacts to people who live or own property on or near the project location. There can be a wide variety of impacts, ranging from the loss of a small part of a home’s front yard to the relocation of a family or business to a new site. The Maine Department of Transportation (MaineDOT) has a legal and ethical duty to insure that it acquires the property interests necessary for its activities, and that the affected individuals are treated fairly and in accordance with procedures outlined in law and regulation. Personnel performing right of way functions are the principal points of contact between MaineDOT and affected property owners and tenants. Their role is to help avoid and minimize impacts, identify compensable impacts that will occur, and carry out valuation, acquisition and relocation activities in accordance with State and Federal requirements and MaineDOT policies. This *Right of Way Manual* provides information to guide Department personnel and consultants in performing those crucial tasks. In addition, the *Manual* is a declaration to the public, auditors and the Federal Highway Administration (FHWA) as to how MaineDOT performs its property acquisition responsibilities.

This *Manual* describes operating procedures for all right of way functions. These functions include the preparation of right of way plans and title acquisition documents, public information and research, the valuation of property interests, negotiation and acquisition of title, residential and business relocation, property management, contracting procedures and standards, quality assurance/quality control, and various administrative activities. The *Manual* also includes guidance for local public agencies performing right of way functions for transportation projects. Appendices to the *Manual* incorporate important reference material including relevant sections of the ***Maine Revised Statutes Annotated (MRSA)***, and Federal right of way regulations.

All persons with right of way responsibilities, including MaineDOT personnel, local agency personnel, and consultants must use this *Manual* as a reference tool for basic information about how to carry out right of way assignments. Because the *Manual* cannot address every problem or circumstance that may occur, MaineDOT expects and encourages personnel to use independent judgment in carrying out their tasks. The Department also encourages personnel to consult with the Property Office and Senior Property Officers for clarification of right of way procedures and standards, and for assistance with solving specific right of way issues.

#### **1-1.01(b) *Manual* Updates**

The Department will revise this *Manual* as relevant laws, regulations, procedures and practices change. In addition, Federal Highway Administration (FHWA) regulations require MaineDOT to update the *Manual* and obtain FHWA approval for it every 5 years after the approval date of the *Manual* (23 **CFR** 710.201(c)(2)).

The Property Office (see Section 1-1.03(a)) is responsible for timely and necessary revisions to the *Right of Way Manual*. This Office will identify when a modification is needed, coordinate changes with the Bureau of Project Development (Project Development), assign the preparation of new text or other material as appropriate, and submit the revised *Manual* to FHWA for approval on the 5-year cycle. The Department expects Senior Property Officers and other personnel involved with right of way activities to notify the Property Office whenever they believe a revision may be appropriate. The Director of the Property Office and the Chief Property Officer will meet annually with the Director of Project Development to discuss the status of the *Manual* and provide necessary updates.

The *Manual* is divided into sections with sections being represented by the number between the dash and decimal point, for example (1-5.1) Users can determine the publication date of the *Manual* by looking at the page header for the section in question. Whenever the Department revises a section of the *Manual*, the revision date will appear in the page header for that section.

#### **1-1.02 Department, Bureau and Right of Way Missions**

The Department and its organizational units have formal statements that define their purposes and objectives. Personnel performing right of way functions are guided not only by the

statements of the Department and Project Development, but also by a mission statement developed by the Property Office *to* govern the delivery of right of way services. The MaineDOT Draft *Strategic Plan* dated 1/05 provides the following guidance:

**LEADERSHIP VALUES:**

Integrity	Customer Orientation
Accountability	Collaborative Partnerships
Commitment to Quality	Effective Communication
Innovation	Employee Support
Efficiency	Hard Work

**VISION:**

Maine-a great place to live, work and play – Maine DOT pursues this vision by

- assuring safer travel,
- strengthening the economy,
- connecting and energizing our communities,
- improving Maine’s links to the world,
- providing equitable mobility,
- creating positive experiences for residents and visitors, and
- respecting the natural and cultural heritage of Maine.

**MISSION**

Maine DOT responsibly provides a safe, efficient, and reliable transportation system that supports economic opportunity and quality of life.

The mission statement developed by the Property Office takes a more specific approach that reflects the special right of way obligations. The Mission is “To fairly and efficiently identify, acquire and manage the property rights needed for MaineDOT activities”.

Personnel performing right of way functions are expected to know and understand the concepts outlined in these three statements. These concepts reflect a philosophy that should serve as a backdrop for all Property Officers and team members as they make day-to-day decisions.

**1-1.03 Right of Way Organization, Functions and Activities**

The right of way function operates within the Department’s Project Development Bureau. The organization chart, Figure 1-1, shows the placement and organizational relationships of the Property Office in the Project Development Bureau.

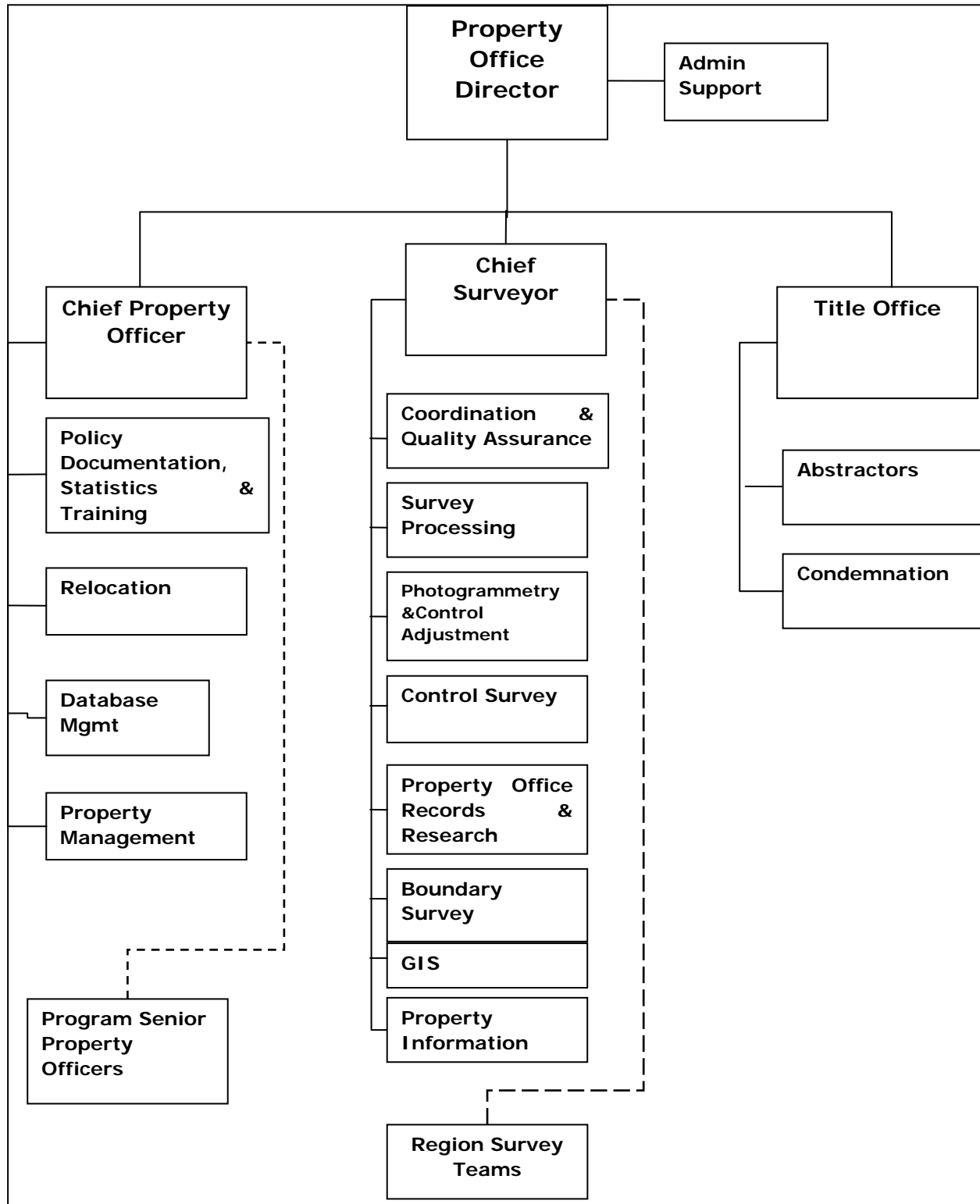


FIGURE 1-1 — Property Office

### 1-1.03(a) Property Office

The Property Office was formed in July of 2004 as a result of a review of the Right of Way process. The goal of the Property Office is to blend the best elements of an organization with a traditional Right of Way Division with a team based organization. The Property Office provides support for the Programs in the area of the traditional Right of Way functions of appraisal, appraisal review, negotiations, and relocation. Additionally, the Office provides technical support for traditional mapping, utility coordination, title and condemnation functions. The Property Office is responsible for the following functions:

1. Insuring consistency and quality in the performance of right of way activities;
2. Serving as an interface between MaineDOT and FHWA, as well as the American Association of State Highway and Transportation Officials (AASHTO), on right of way issues;
3. Developing and revising MaineDOT Right of Way policies & procedures, including revisions to this *Manual*;
4. Determining core training and experience requirements for Right of Way professionals at MaineDOT; and
5. Guiding the Programs in the delivery of LPA-administered projects.

### 1-1.03(b) Objectives of Right of Way Functions

The overall objective of right of way activities is to help achieve the best balance possible among the competing needs of public transportation facilities and adjacent property owners and tenants. The role of the Property Office team members in recognizing and addressing potential project impacts on people and property begins at the earliest planning stage for a project. That role continues through design, construction, and sometimes operation, of the project. Many right of way activities are shaped by the need to satisfy the requirements of the 5th and 14th Amendments to the U.S. Constitution, and Article I, Section 21 of the Maine Constitution. Those provisions mandate due process in the taking of private property for public use and the payment of just compensation for such takings. Additional standards for right of way actions appear in the **Federal Uniform Act**, 42 **United States Code** Chapter 61, and in Title 23 of the **Maine Revised Statutes**. The **Uniform Act** applies to all projects involving the use of Federal funds in any phase of a project. All MaineDOT activities are subject to Maine State law.

The significance of right of way concerns in the delivery of transportation programs is demonstrated further by the inclusion of these impacts within the scope of analysis required under the **National Environmental Policy Act (NEPA)**, 42 **United States Code** Sections 4321-4347 and implementing regulations at 40 **Code of Federal Regulations** Part 1500 -1508, and 23 **Code of Federal Regulations** Part 771 (USDOT) for any project involving a major

Federal action. Federal funding of transportation projects, as well as most Federal permits for projects, are considered major Federal actions triggering application of **NEPA** (see 40 **Code of Federal Regulations** Section 1508.18).

It is important to keep in mind that, for most transportation projects, the Department must acquire the necessary property interests and complete relocation activities **before** the project can be put out to bid for construction. This places right of way activities on the critical path for MaineDOT project delivery. As MaineDOT team members handle project budget and schedule issues, they must insure that the projects will comply with the substantive and procedural requirements of Federal and State law. In addition, they must keep in mind MaineDOT's obligations of equity and good-faith dealing with affected property owners and tenants. Primary responsibility for meeting these mandates lies with the Department team members responsible for the right of way activities.

#### **1-1.03(c) Right of Way Role in Planning**

Transportation projects typically originate through planning proceedings within the MaineDOT BTSP. Other occasional sources of projects include MaineDOT's Office of Passenger Transportation (OPT), Office of Freight Transportation (OFT) and Office of the Commissioner of Transportation.

Property Office team members act as advisors to the Bureau of Transportation Systems Planning (BTSP) for both near-term and long-term transportation planning activities. The BTSP is responsible for the identification of needed transportation projects across the State. It prepares a 20-year plan that takes a comprehensive look at Statewide transportation needs, goals and objectives. The BTSP also prepares the project-specific Biennial Capital Work Plan which MaineDOT submits to the Maine Legislature for funding every 2 years. The Property Office helps the BTSP identify potential major impacts on people and property and advises the BTSP on early location and design decisions. For upcoming Work Plan proposals, the Director of the Property Office comprises one member of the multidisciplinary team that field checks projects and makes recommendations on project modification, inclusion or exclusion. The BTSP often requests right of way studies, including preliminary cost estimates, for particular programs or projects. Property Office team members provide similar services to other entities (e.g., Office of Freight and Business Services), as they plan and execute projects within their areas of expertise.

#### **1-1.03(d) Right of Way Role in Project Development**

Most projects move to Project Development for detailed design, project approvals and permits, right of way acquisition, and construction. Property Office team members are a part of the multidisciplinary team that assumes responsibility for each project as it enters the project development phase. Property Office team members work with other Project Team Members to identify and understand right of way impacts, as well as to prepare schedules and budgets that incorporate the necessary right of way activities. Those activities include the following:

1. Research to gather information on existing conditions in the area of the proposed project. The type of information obtained includes existing highway layouts, apparent owners' names and addresses, boundaries of adjacent properties property boundary markers and the location of existing improvements on adjacent land (e.g., houses, septic systems, wells). See Chapter 2 for guidance on right of way mapping.
2. Mapping of existing right of way limits and proposed right of way limits, and determining the type and physical extent of property interests needed for the project. This information is included in the preliminary and final design plans. The right of way plans are the information base used for the preparation of acquisition documents including deeds, easements and notices of condemnation. See Chapter 2 for guidance on right of way mapping.
3. Valuation of property interests the Department will acquire for the project. This process determines just compensation for the property, which is required by both State (Maine Constitution Article 1, Section 21, and Title 23 **Maine Revised Statutes** Section 155) and Federal law (see Fifth Amendment to the US Constitution and 49 **Code of Federal Regulations** Section 24). Right of Way personnel use a variety of procedures to value property interests, depending on the nature of the property interests MaineDOT intends to acquire and the complexity of the valuation problem. See Chapters 3 and 4 for guidance on valuation.
4. Negotiation to acquire property based on the determined just compensation. Negotiators for the Department are required by law to follow certain procedures relating to the timing and content of offers and other negotiation activities in order to protect property owners interests and rights. See Chapters 3 and 5 for guidance on acquisitions.
5. Relocation of property owners and tenants may occur in cases where the impacts of the project require the acquisition of a residence or business location. For example, in negotiation for the purchase of underlying real property, there are specific legal requirements pertaining to notice, determination of compensation and other aspects of the relocation process. The Property Office Relocation Manager works closely with the affected individuals. For residential relocations, MaineDOT must insure that the replacement housing is decent, safe and sanitary. For both residential and business relocatees, the goal is to make their move to a new location as financially neutral and trouble-free as is reasonably practical. See Chapter 6 for guidance on relocation.
6. Management of property acquired by the Department for transportation projects. Most often, this is a short-term activity that focuses on issues such as asbestos inspection and abatement, and also the demolition of existing structures. In some cases, management of a particular property may extend over a number of years. Where appropriate, Property Office team members may elect to rent property until a project begins. The Property Manager coordinates with the team members and the

Legal Division to handle the sale of excess property. See Chapter 7 for guidance on property management.

7. Administrative services required in support of Right of Way activities. Critical administrative functions include the preparation of notices to property owners, requisitioning of checks for acquisition and relocation payments, and management of records and data relating to right of way activities on projects.

The Property Office also provides technical assistance and support to local public agencies (LPAs) (e.g., municipalities that are carrying out project development activities funded by MaineDOT). The role of the Property Office team member in these cases is to help insure the LPA understands the right of way requirements for its project and that it submits the required right of way certification for the project. However, LPAs remain responsible to MaineDOT for compliance with applicable laws and regulations. See Chapter 8 for guidance on right of way and local public agencies.

### **1-1.03(e) Right of Way Role in Maintenance and Operations**

Once Project Development completes a project, responsibility for it is transferred to the Maintenance and Operations (M&O) Region in which it is located. The 5 M&O Regions hold broad responsibility for managing and maintaining transportation facilities within their geographic area. M&O maintenance projects on existing facilities occasionally require the acquisition of additional property rights. Those acquisitions must comply with MaineDOT's acquisition criteria. Senior Property Officers in the Highway Program provide M&O with assistance on these tasks on an "as-needed" basis.

## **1-1.04 Administrative Structure and Operations**

### **1-1.04(a) Overview of Bureau of Project Development**

Project Development holds primary responsibility for the design and construction of transportation projects. Its organizational structure, shown in Figure 1-1, is based on programs and project teams. The objective is to provide each MaineDOT program with control of all of the functional skills and resources needed to develop and deliver transportation projects. The programs in Project Development, and the types of projects they handle, include:

1. Highway Program. All highway construction, rehabilitation, and paving projects.
2. Urban and Federal Bridge Program (Bridge). All bridge and most other structure projects.
3. Multimodal Program (Multimodal). Rail, air, bike, pedestrian and marine projects.

These programs report to the Assistant Director of Project Development. The Director of Project Development oversees overall Bureau operations. That position is responsible for Bureau policy, administration and management.

#### **1-1.04(b) Right of Way Role in Project Teams**

Project Development's program-based organization, adopted in 2000, emphasizes the placement of technical skills at the project level. Team members assigned to the project teams provide the right of way function. The composition and organizational structure of right of way services in each program are described below.

#### **Highway and Bridge Programs**

The Highway and Bridge programs are structured around teams. These Teams have permanent members from various disciplines who are responsible for projects within specified geographic areas that are based on MaineDOT's Maintenance Regions. Each Team in these 2 programs has functional resources covering Right of Way Negotiations, Appraisal and Mapping. When the Teams need relocation or property management services, they may request them from the Property Office. Property Office team members on the Teams report to the Team's Project Manager for prioritization of work assignments and for guidance on matters relating to project scope, schedule, budget and project resources. The Property Office provides the Senior Property Officers with technical guidance on right of way matters. The Chief Property Officer is responsible for the technical proficiency of Property Office team members. The Senior Property Officers report to the Project Manager on project and program delivery matters. Highway and Bridge Program Managers hold overall responsibility for the performance of their programs.

A majority of the projects handled by Highway and Bridge Programs are Federally funded. New alignment projects are likely to have the most significant potential impacts. However, reconstruction and widening projects also can cause significant right of way impacts, including relocations. This means that personnel who perform right of way activities for these programs must have a full understanding of applicable State and Federal requirements.

#### **Multimodal Program**

Multimodal Program is responsible for projects that primarily involve transportation modes other than highways. The smaller number of projects handled by Multimodal Program, together with the highly specialized nature of the services Multimodal Program often requires, dictates that the program select Project Team Members on a case-by-case basis. The Project Managers in the Multimodal Program request needed right of way services from the Property Office. The Property Office will coordinate requests with the Program Managers to provide assistance. Multimodal projects often are not Federally funded, but usually do involve Federal permits. Multimodal projects frequently present unusual characteristics, such as cooperative and joint-ownership ventures and the acquisition of heavy industrial sites or infrastructure. This necessitates particularly careful consideration of the right of way, **NEPA**, hazardous waste and other issues in the development of the projects.

## **Traffic Engineering Division**

The Traffic Engineering Division is situated within the Bureau of Maintenance and Operations. While major highway intersection projects are handled by the Highway program, Traffic Engineering is responsible for smaller intersection and signal improvement projects. The projects handled by Traffic Engineering are most always designed by consultant staff and may or may not have right of way needs. In the event right of way is needed, the Project Manager in the Traffic Division request assistance from the Property Office. The Property Office will coordinate requests with the Program Manager to coordinate the delivery of right of way activities.

### **1-1.04(c) Property Office Records and Research Units**

R/W Mapping Support and Research is a part of the Property Office. There are two main right of way service areas in this unit. Right of Way Mapping (Mapping) prepares acquisition documents, including parcel descriptions, for MaineDOT condemnation actions, reviews Right of Way plans for conformity and completeness, records completed right of way plans and leads the policy setting for Right of Way mapping standards. Right of Way Research (Research) fields public requests for information about highway boundaries and ownership details relating to completed and pending MaineDOT projects, and requests for historic data on highways around the State. Both of these functions are under the direction of the Chief Surveyor. The Mapping and Research function is described in Chapter 2.

### **1-1.04(d) Property Office Job Classifications**

For Right of Way positions, the Department uses job classifications that encompass right of way and general real estate knowledge, skills and abilities. The specifications are guidelines and are not all-inclusive of the knowledge, skills, and abilities involved in right of way work, or the duties that MaineDOT may assign to an employee in a given classification.

The following job classifications are typically used for Property Office team members:

1. Director, Property Office: This position has the overall responsibility for all survey and title functions, property identification, valuation, Just Compensation determination, acquisition, property management and relocation administration.
2. Chief Property Officer: This position is responsible for developing, implementing and maintaining quality control standards and specifications to insure uniform and consistent performance of Property Office technical staff across all programs and operations.
3. Senior Property Officer: The Senior Property Officer is well versed in the five major right of way functions, appraisal, appraisal review, negotiations, relocation and property management. SPO's conduct appraisal reviews, and appraisals on complex properties, and provide general right of way guidance to the teams as needed.

4. Property Officer. Primary responsibilities include the valuation of property, including appraisals and review of appraisals. Also negotiates with property owners and represents the Department in compensation hearings before the State Claims Commission and the Maine Superior Court.
5. Assistant Property Officer. Primary responsibilities include negotiations with property owners and administrative acquisitions.
6. Property Manager. Manages property acquired by MaineDOT for projects, including safety and demolitions issues, leasing and the sale of excess property.
7. Relocation Services Manager. Works with residential and business owners and tenants to relocate them off the project site. This position is responsible for determining relocation benefits and ensuring MaineDOT compliance with notice and other procedural requirements relating to relocation.
8. Transportation Aide, Assistant Technician, Technician, and Senior Technician. Primary responsibilities include gathering property information, preparing Right of Way Plans for MaineDOT projects, maintaining public records pertaining to the highway rights of way, responding to public requests for information about rights of way, property negotiations, administrative acquisitions, utility coordination and management.

#### **1-1.04(e) Project Development Work Flow and the Team Process**

When projects move from the BTSP to Project Development, the BTSP forwards informational reports to Project Development. These reports serve as the starting point for Project Development's work. The Bureau uses a multidisciplinary Team approach to the project development process. Project Managers head each Team and hold the primary responsibility for performance and project delivery. Technical disciplines represented on the Teams include right of way valuation and acquisition, design, survey, mapping, geotechnical, utilities, construction, environmental and technical support. Team activities include research and data gathering, determination of project scope, engineering design, determination of right of way and environmental impacts, right of way and design plan preparation, right of way relocation and acquisition, public participation and local coordination, utility and railroad coordination, permitting and other project approvals, budget and schedule management, maintenance of project data in the ProjEx Information Management System, and construction.

#### **1-1.04(f) Integration of the Right of Way Function into Project Development Process**

One goal of the Project Development Team process is to achieve integration of all necessary disciplines and considerations into the management and decision-making for a project. This is especially critical for right of way functions because of the interdependencies among project scope and design, project budget and schedule, and right of way acquisition and relocation activities. The integration of right of way activities at MaineDOT is accomplished through the use of Project Team Members qualified to handle preliminary and final right of way mapping, negotiations, property valuation and property acquisition documentation. Mapping activities are handled by Right of Way Mapping Team Members, while the remaining right of way activities are carried out by Property Office Team Members. Relocation and property management

services are available to the Teams upon request from Relocation Services Manager and the Property Manager.

Right of way activities are interwoven throughout the project development process. Major right of way activities, in the approximate order of occurrence on a project, include:

1. Participation in Team meetings and site visits;
2. Preparation of the names and addresses mailing list;
3. Gathering of data for the valuation of affected properties;
4. Completion of Property Owner Reports;
5. Participation in a preliminary public meeting, as needed;
6. Review of proposed alignment for highway projects;
7. Plotting existing right of way on Plans;
8. Preparation of requests for title abstracts on affected properties;
9. Preparation of estimates of project acquisition costs;
10. Determination of relocation needs and preparation of a preliminary Relocation Plan and estimates (including sign relocations);
11. Contact of affected property owners and tenants;
12. Review of a preliminary Design Plan;
13. Review of Approach Plans for bridge projects;
14. Review and acceptance of Design Plans Impacts Complete;
15. Preparation of final Right of Way Plans;
16. Valuation of property rights to be acquired for the project including Just Compensation determinations;
17. Negotiation with affected property owners and tenants for project acquisition and relocation;
18. Acquisition of necessary property rights, by voluntary transaction or condemnation through recording of the condemnation or document;

19. Completion of relocations of all displaced persons, which includes items of personal property.
20. Completion of a Right of Way Certificate for the project, specifying that MaineDOT has acquired all property rights necessary for the project in accordance with State and Federal law and regulation, and all displacees have been relocated (the Certificate becomes a part of the Plans, Specifications and Estimates (PS&E) Package that is used for project bidding and construction);
21. Identification and execution of property management activities required pending project construction (e.g., rental, rodent control, asbestos inspection and abatement);
22. Resolution of unsettled claims for acquisition and relocation compensation through negotiation, State Claims Commission proceedings or judicial proceedings; and
23. Recording of the Right of Way Plans.

Later parts of this *Manual* discuss these activities in greater detail.

#### **1-1.04(g) Legal Mandates Affecting Right of Way Activities**

**Right of way activities**, more than any other aspect of project development, **are controlled by State and Federal laws and regulations**. Personnel performing right of way functions must be constantly alert to the content of those laws and regulations, and to the appropriate interpretations of them in the field. Property Office staff and the FHWA Maine Division Right of Way Officer can provide guidance to Property Office team members.

The following Sections of Title 23 ***Maine Revised Statutes Annotated (MRSA)*** apply to the Property Office:

1. Section 61 – Vacation, Sale or Lease of Acquired Land.
2. Section 63 – Records of Right of Way Division Confidential.
3. Section 73 – Sensible Transportation Policy Act.
4. Sections 151 to 161 – State Claims Commission.
5. Sections 241 to 247 – Relocation Assistance.
6. Sections 301 to 307 – Controlled Access Highways.
7. Sections 651 to 654 – Laying Out, Altering and Discontinuing Highways.
8. Section 2952 – Longtime Buildings and Fences as Bounds – Estoppel.
9. Sections 3001 to 3035 – Acquisition of Property for Highway Purposes (Towns).

The primary Federal laws pertaining to Right of Way are in Title 23 and Title 49 of the **U.S. Code (USC)**. The **USC** is implemented through regulations published in the **Code of Federal Regulations (CFR)**. Right of Way is addressed in 23 **CFR** Part 710. and in 49 **CFR** Part 24.

The full text of the above **MRSA** and **CFR** references is in Appendices A and B. The content of this *Manual* fully complies with the State and Federal law and regulations. Property Office team members should secure interpretations of the law and regulations from the Chief Property Officer when unique or complex situations are encountered that are not addressed in this *Manual*.

### **1-1.05 Integration of Right of Way Functions with Functions of Other Organizational Units**

#### **1-1.05(a) Legal Services Office**

The Legal Services Office plays a major role in the execution of right of way functions. Successful MaineDOT operations require close cooperation and consultation among Legal Services and Property Office team members.

To facilitate cooperation and consultation, the Title Office is located in the Property Office and the Principal Attorney for Real Estate will have working space in the Property Office.

The Title Office performs a range of property title services to identify the owners of property to be acquired for projects. These include a preliminary investigation to secure deed descriptions used by Mapping, “acquisition-to-date” title searches for all properties expected to have either permanent or temporary rights acquired for a project, and a full 40-year title for significant acquisitions (including all full-fee acquisitions). The Title Office delivers to Property Office team members a list of the property owners and other parties of interest to whom MaineDOT must give notice in any condemnation action for a project. The Title Office verifies ownership and parties of interest immediately before a condemnation. The Title Office also does a final title check before it records title transfer documents in the appropriate Registry of Deeds. Once the recording of the condemnation is complete, The Title Office delivers to the Property Office Team Member a notification that MaineDOT has acquired good and sufficient title to the property in question.

Legal Services also performs research on a wide variety of legal issues that arise in the course of a project and that affect right of way work. Typical matters include determining the legal status of a highway layout, the interpretation of property boundaries, the legal status of structures, property ownership and proper payees for acquired property affected by multiple liens or mortgages.

Legal Services also provides guidance to Appraisers on issues of compensability, interpretation of property interests and ownerships, and interpretation of case law as it relates to the valuation function. With the new requirement that each appraisal have a written scope of work, it is

important that Legal Services guidance is provided in a format that can be included as part of the valuation documentation.

Legal Services and Property Office team members work together to handle unsettled compensation claims for property that is acquired for projects. Whenever compensation for an acquisition remains unsettled 60 days after the condemnation date, the case is automatically referred to the State Claims Commission, which is an administrative hearing body that offers affected parties a chance for a neutral review of their claim. Once a case is referred to the State Claims Commission, the opportunity for an administrative settlement by the Property Office team members is reduced, and Legal Services assumes responsibility for negotiation and settlement. Close coordination continues between Legal Services and Property Office team members during this process. Property Office team members often serve as witnesses and as informal resources during the proceedings. Legal Services seeks a Property Office review and recommendation on any proposed legal settlement. If a case continues to the Maine Superior Court after completion of State Claims Commission proceedings, Legal Services retains responsibility for the matter. Coordination with the Property Office, and Property Office assistance to Legal Services, continue in a manner similar to that during the State Claims Commission phase.

Non-compensation claims also may arise during the project development process. Property Office team members and Legal Services staff work in close coordination whenever claims appear to present a threat of litigation. The extent of Legal Services involvement is established cooperatively on a case-by-case basis up to the time that a lawsuit actually is filed. Once a court case starts, Legal Services assumes responsibility for managing the case, including creating strategy and conducting negotiations. Throughout the litigation process, Legal Services and Property Office personnel continue to coordinate closely with each other. Legal Services works on these cases primarily with the Property Office Team Member .

In special cases, Legal Services may handle all negotiations and documentation for the acquisition of property. This typically occurs on projects that involve highly controversial acquisitions, projects with unusual schedule requirements or special-purpose projects that require the acquisition of a small number of significant parcels. In these cases, Property Office team members serve as a resource to Legal Services.

### **Coordination with the Legal Services Office**

The right of way function maintains an open line of communication on all levels with the Legal Services Office. Consultation is generally informal. This enables appropriate and timely right of way actions involving legal issues. When a formal opinion is needed, a request will be made in writing to the Chief Counsel through the Chief Property Officer.

The Senior Property Officers work with the Legal Division on the following activities:

1. Title certifications,
2. State Claims Commission activities,
3. Superior Court Appeals on compensation,

4. Closings - acquisition by deed,
5. Legal advice on acquisition compensability questions, and
6. Legal settlements after Superior Court filing.

#### **1-1.05(b) Environmental Office**

A mutually supportive relationship exists between the right of way process and environmental activities. The Environmental Office is responsible for determining the human and natural resource impacts of proposed MaineDOT activities and for securing necessary environmental permits and approvals. This creates several interdependencies between the Environmental Office and the Right of Way process. The analysis of human environmental impacts by the Environmental Office includes consideration of right of way impacts, especially the effects of displacement caused by acquisition of homes and businesses. Natural resource impact determinations rely heavily on a consideration of the boundaries of proposed acquisitions, as determined and mapped by Right of Way mappers. Documentation requirements and resulting scheduling requirements vary with the nature and extent of the potential project impacts. Completion of the **NEPA** review and documentation process is a prerequisite for beginning the negotiation phase of right of way acquisition. Delays in either environmental or right of way functions can have an enormous effect on project delivery. Good communication and coordination between the Environmental Office and Property Office personnel from the beginning to the end of a project is critical to its success.

#### **1-1.05(c) Other Multi-Unit Activities**

Property Office team members perform a number of other activities that require coordination across unit boundaries. These include the review of private developer's projects involving changes to transportation facilities and the management of access to highways.

Developer project reviews are managed by the MaineDOT Traffic Section. This unit refers developer proposals to Right of Way Mapping for evaluation of the right of way impacts of the proposed design, the accuracy of the right of way layout, the scope of acquisition requirements and the completeness of acquisition documents. Based on its review, Right of Way Mapping makes a recommendation to the Traffic Section. The recommendation may be to approve, approve with conditions or reject the proposal. . A more detailed explanation of the developer review process appears in Chapter 2.

Management of access to highways from adjacent properties and roadways is the responsibility of the Traffic Section. Right of Way Mapping and the Property Manager in the Property Office will provide support on right of way issues. Their assistance typically includes property ownership information, right of way layouts, and preparation of acquisition and disposition documents. Property Office team members also provide assistance with valuation and negotiation as needed.

## **1-2 DECISION-MAKING FOR RIGHT OF WAY ACTIVITIES**

### **1-2.01 Goals and Policies**

MaineDOT has a legal and social obligation to insure that individuals affected by the construction, operation and maintenance of transportation facilities are treated consistently and equitably. Property owners, tenants and business owners are entitled to protections, benefits and advisory assistance, as discussed in detail in Chapters 3 through 6. Applicable due process requirements include notice to a party from whom property will be acquired, payment of just compensation for property rights acquired by MaineDOT, and assistance in locating replacement housing and business sites. The goal for Property Office team members is to find ways to meet MaineDOT project needs while fully complying with property owner protections. . Simply put, the mission of the Property Office is to fairly and efficiently identify, acquire, and manage the property rights needed for MaineDOT activities”

### **1-2.02 Major Decision Points**

#### **1-2.02(a) Right of Way Milestones**

As the right of way process unfolds, there are a number of major decision points that significantly affect the course of a project. Table 1-2, on the following page, shows major right of way decision points, the decision makers and the related project development process steps.

**TABLE 1-2 — RIGHT OF WAY MILESTONES**

<b>Right of Way Milestone</b>	<b>Decision Maker(s)</b>	<b>Related Project Development Process Step</b>
Approve initial right of way estimate for project (First Phase Right of Way)	Project Manager & Senior Property Officer.	Project Kick-off
Set scope of initial property title and valuation work	Senior Property Officer.	Project Kick-off
Complete initial relocation plan and estimate	Relocation Manager & Senior Property Officer.	
Approve final right of way estimate	Senior Property Officer	Preliminary Design Report and Preliminary Project Plans
Approve final relocation plan and estimate	Relocation Manager & Senior Property Officer.	
Approve appraisal process level for affected parcels	Senior Property Officer.	Preliminary Design Report and Preliminary Project Plans
Review valuation process decision for required modifications	Senior Property Officer or Chief Property Officer if necessary.	Plan Impacts Complete
Approve final right of way plans	Chief Surveyor or Designee	
Determine "Fair Market Value"	Assigned Property Officer or Review Appraiser	
Determination of Just Compensation	Property Office Director or Designee	Fair Market Value Determination
Authorize initiation of acquisition negotiations (Second Phase Right of Way)	Senior Property Officer.	<b>NEPA</b> Review Complete
Decide to seek administrative settlement in excess of just compensation	Senior Property Officer Team Member up to limits of financial authority, then Legal Services and the Acquisition Review Committee.	Prior to or after Right of Way Certification
Determine need for condemnation	Senior and Chief Property Officer.	
Certify that all necessary property rights for the project have been acquired (Right of Way Certification)	Chief Property Officer, Director Property Office.	Right of Way Certification
Refer unsettled property claims to SCC	Required by law after 60 days Condemnation Unit.	
Review proposed legal settlements and make recommendations	Chief Property Officer, Senior Property Officer.	

**1-2.02(b) Right of Way Certification**

As a prerequisite to advertising a federally funded project for physical construction, MaineDOT must certify the relocation and acquisition status of property needed for the project. The Right of Way Certificate, Form AD-3, is used for this purpose. The Certificate is required by 23 **CFR** 635.309(b), (c), (g), and (h). The project Right of Way Certificate is to be completed and submitted by the project Senior Property Officer to the Property Office. The project Right of Way Certificate must be executed by the Chief Property Officer or Director Property Office, with the original forwarded to FHWA and copies delivered with the Plans, Specifications & Estimates (PS & E) to the Contracts Unit and Project Manager before the project can be advertised for construction bids.

As a prerequisite to authorizing advertisement for construction, the Right of Way Certificate shall reflect a fact situation as indicated in 1, 2, or 3 below:

1. Class 1 Certificate: All necessary rights-of-way, including legal and physical possession and control of access rights, have been acquired. State Claims Commission actions, or Superior Court appeals may be pending, but MaineDOT has obtained title and legal possession to all property. There may be some improvements remaining on the right-of-way, but all occupants have vacated the lands and improvements. The great majority of projects authorized for advertisement by MaineDOT will be in this category. A Class I Certificate may be issued with personal property located within the taking provided the owners of the personal property have received a 90 day notice; and the personalty is addressed in the bid contract; and arrangements have been made for its move/removal. Arrangements can include an agreement for relocation with a private contractor, or by the personalty owner, or removal by the contractor after the expiration of the 30 day notice as outlined in Chapter 6 Section 6-7.06. Note: In the event the project is delayed as a result of issues arising from this process, FHWA will not participate in any additional costs or delay claims.
2. Class 2 Certificate: Although all necessary rights of way have not been fully acquired, MaineDOT has obtained the right to occupy and use all rights-of-way required for the project. Appeal of some parcels may be pending in a Superior Court, or rights of entry may have been obtained on some parcels. The occupants of all lands and improvements have vacated. Under these circumstances MaineDOT will secure FHWA concurrence before advertising a project for construction. Class 2 Certificates are filed "with exception" and will require follow-up with a Class 1 certificate when the right of way has been fully acquired. In the event the project is delayed as a result of issues arising from this process, FHWA will not participate in any additional costs or delay claims.
3. Class 3 Certificate: The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of residences on such parcels have had replacement housing made available to them in accordance with Chapter 6-1.03 of this *Manual* and 49 **CFR** 24.204 (Availability Of Comparable Replacement Dwelling Before Displacement). MaineDOT must receive prior concurrence from FHWA to advertise a project on this basis. Class 3 Certificates are filed "with exception" and

will require follow-up with a Class 1 certificate when the right of way has been fully acquired.

4.

Advertisement for bids or force-account work may be authorized only if FHWA concurs with MaineDOT in advance that it will be a **significant public benefit**.

FHWA must also determine the use of this conditional certification is in the public interest. Requests will be made only in very unusual circumstances so that exceptions will not become the rule. The MaineDOT request to FHWA for concurrence will include full explanation of circumstances, and reasons why the advertisement is a significant public benefit. The request to FHWA will identify each occupied parcel, and will include a realistic date when physical occupancy and use is anticipated and a work plan for delivering the parcel by the specified date. A statement shall be included in the request acknowledging that in the event the project is delayed as a result of issues arising from this process, FHWA will not participate in any additional costs or delay claims. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained. The physical construction may proceed, but MaineDOT will ensure, by appropriate contract restrictions that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are protected against inconvenience, injury or any action coercive in nature.

A project will not be advertised for construction if the status of right of way is not as described under 1, 2 or 3 above.

If a project is authorized for advertisement and construction with a Right of Way Certificate conditioned as in 2 or 3 above, MaineDOT will issue a revised Class 1 Certificate when occupied parcels are vacated and full legal possession of all properties is complete. The revised certificate will be provided to FHWA, and to the Project Manager for purpose of removing any restrictions on the contractor with regard to property.

#### **1-2.02(c) Signatory and Financial Authority**

The Department's Administrative Procedures Memorandum No. 10 (APM 10) establishes the authority of MaineDOT staff to sign documents and commit the State of Maine to expenditures. Provisions relevant to the Right of Way process primarily relate to the authority to make binding offers to property owners and tenants, to execute a Right of Way Certificate and to enter into contracts for consultant services. For applicable limits, consult the current Administrative Procedures Memorandum No. 10.

#### **1-2.02(d) FHWA/MaineDOT Oversight Agreement**

Under the provisions of Section 1305 of the *Transportation Equity Act for the 21st Century of 1998* (TEA-21), States can assume responsibility for a broad range of **USC** Title 23 functions

that were formerly overseen and approved by FHWA. The FHWA/MaineDOT Agreement for the Partnering and Shared Oversight of Federal Aid Projects (December 2007 or current version ) defines shared responsibility in Maine. The management of project right of way certifications is identified as a MaineDOT responsibility.

Under the Oversight Agreement, lead project units primarily are responsible for compliance with applicable legal requirements. In the case of certification, Project Development is the responsible party for projects in the Highway, Bridge, and Multimodal Programs. Compliance with the Federal laws and regulations is delegated to Project Managers and Property Officers

The shared oversight pertains only to activities under US Code Title 23. **Right of way activities performed pursuant to other US Code titles remain under Federal approval and oversight.** This includes all real property related activities (US Code Title 49). All **NEPA** approvals also remain with FHWA. The Oversight Agreement does not alter requirements for FHWA approvals on MaineDOT non-project activities. This affects several property management activities including modification in the degree of access control, and disposal of property acquired for Interstate highways.

The Oversight Agreement establishes 2 categories of projects — exempt and direct involvement. Exempt projects for which MaineDOT assumed the highest level of responsibility are:

1. Interstate projects that are resurfacing, restoration or rehabilitation projects, or are new construction and reconstruction projects with estimated construction values of less than \$1,000,000;
2. Non-interstate National Highway System (NHS) projects, designated in MaineDOT's programs as "E" projects; and
3. Non-NHS projects, including non-highway projects designated as "X" projects.

Direct involvement projects continue to have active FHWA participation through its membership on Project Teams. No direct FHWA approvals are required for direct involvement projects based on the premise that adequate oversight is exercised through FHWA involvement in the Project Team. Direct involvement projects include:

1. Interstate new construction or reconstruction projects with construction values of \$1,000,000 or more; and
2. Exempt projects selected by FHWA for direct involvement due to characteristics including cost, environmental sensitivity, new or unique engineering features, unusual or innovative project procedures, national or international significance, or the opportunity for application of FHWA technical or procedural expertise.



### **1-3 QUALITY ASSURANCE/QUALITY CONTROL**

MaineDOT strives for quality in all of its products and services. MaineDOT management and project personnel, along with the public as consumers of MaineDOT products and services, share responsibility for quality. Quality control rests with those persons performing services or creating products. It reflects their obligation to perform their jobs well. Quality assurance, on the other hand, is a management oversight responsibility. It is management's duty to monitor, evaluate and modify work performance and processes to insure that MaineDOT achieves its desired quality goals.

All MaineDOT employees and consultants performing right of way activities are expected to understand the quality assurance standards applicable to their tasks and to strive to meet them. They must work with management to coordinate quality assurance and quality control efforts. Each functional chapter in this *Manual* contains information on the quality assurance expectations for that function. Additionally, there is a separate Quality Assurance/Quality Control Chapter, Chapter Ten that summarizes functional quality assurance standards and describes in detail the quality control responsibilities of right of way management.



## 1-4 PUBLIC INFORMATION AND PUBLIC INVOLVEMENT

### 1-4.01 Confidentiality of Right of Way Records relating to Appraisals and Negotiations

The general policy of the State of Maine is that the Government will conduct its proceedings openly and will make its records available for public inspection (1 **MRSA** Section 401). The definition of public records contained in 1 **MRSA** Section 402(3) is quite broad and includes most MaineDOT records. However, the Maine Legislature created a specific and limited exception to the open records law for right of way in 23 **MRSA** Section 63. Under that statute, right of way records and correspondence relating to negotiations and appraisals of property are confidential until the later of the following 2 events:

1. Final settlement of all parcels on the project to which the records and correspondence relate; or
2. Nine months after the completion date of the project according to the records of MaineDOT.

Records for claims appealed to Superior Court remain closed to public inspection until after the award of the court.

### 1-4.02 Right of Way Role in Public Involvement Activities

Experience has shown that good communication between MaineDOT and the public is the best means for insuring that transportation activities satisfy public needs while avoiding and minimizing unnecessary harm to persons, property and natural resources. MaineDOT's public involvement objective is to achieve 2-way communication. Information should flow from MaineDOT to people who are interested in or affected by a proposed project, to help them understand the transportation needs, the choices for how to address those needs and the project development process that applies. The flow of communication to MaineDOT should include the interests and concerns of property owners and the public, the local conditions relevant to the design and operation of the facility, and the effectiveness of the process in fostering public knowledge and participation. MaineDOT tailors the structure of its public involvement process to the needs of each project and the applicable public involvement requirements under the **Sensible Transportation Policy Act** (23 **MRSA** Section 73(3) (G) and implementing regulations), **NEPA**, and **23 CFR Section 771.111**. In Project Development, design of the public involvement plan for a project is the responsibility of the Project Manager.

As the main link between MaineDOT and property owners and tenants, Property Office team members perform critical communication functions through both formal and informal methods. Formally, Property Office Team members are a part of the public involvement process for MaineDOT projects. Depending on project needs, the Property Office team members or staff may participate in the preliminary public meeting and other public information sessions held in the early stages of a project. At those meetings, Property Office team members explain the existing right of way layout and conditions. Typically, a plan sheet showing existing conditions is available for the meeting. Property Office team members also gather information from

attendees that contributes to the Department's knowledge of the project area. In some cases, Property Office team members may offer a brief summary of the right of way process. Perhaps most importantly, Property Office team members use these occasions to begin informally to build relationships with the local residents with whom they will negotiate as the project moves forward.

A formal public hearing typically occurs after the Project Team approves the preliminary Plans and Preliminary Design Report. For most projects, opportunity for public hearings is the action that meets public notice and comment requirements under the ***Sensible Transportation Policy Act*** and ***NEPA***. A transcript is made of the hearing. Full plans, showing existing and proposed conditions, are posted during the hearing. The formal role of Property Office Staff at the public hearing includes:

1. Explaining the right of way process, including a summary explanation of the rights of property owners and tenants affected by the project; and
2. Discussing the right of way impacts of the proposed project, including any alternatives under consideration.

Informally, the public hearing is another opportunity to gather information for the project and to enhance the channels of communication with local residents and officials.

Beyond these scheduled public involvement sessions, Property Office team members have repeated opportunities during their fieldwork for communication with local residents. Some of those contacts are a part of formal right of way procedures, but many are casual contacts as Property Officers gather information needed for their work. It is important to appreciate the important role these contacts play in developing the relationships that will dictate the course of negotiations with affected property owners.

## **1-5 ACQUISITION, RELOCATION AND CONDEMNATION PAYMENTS**

### **1-5.01 Payment Process**

All claims for payment of property acquisition and relocation costs are processed through the Property Office Condemnation Unit. Checks for property acquisition are generally delivered by certified mail, with return receipt requested.

Certain relocation payments are hand delivered by the project right of way staff person. Hand delivery is the preferred method for relocation replacement housing payments, as MaineDOT must assure that the claim amount is applied to the purchase cost of replacement housing. Checks for relatively minor amounts, such as for residential moving costs, may be sent to the claimant by ordinary first class mail.

Property owners should be personally advised that the check for property acquisition will include the names of all parties that have an interest in the property as shown on the title report. This will include co owners, and lien holders, including mortgagees. It is the property owner's responsibility to clear liens and secure lien holder signatures on the State check.

Lost or missing checks may be replaced. The project staff member who is advised of a missing check should report this to the Program Support Services Unit. The owner or other claimant will be required to sign an affidavit attesting that a check is lost or missing. A replacement check will be issued after checking with the State Treasury to assure that the check has not been paid, and to cancel payment on the missing check.



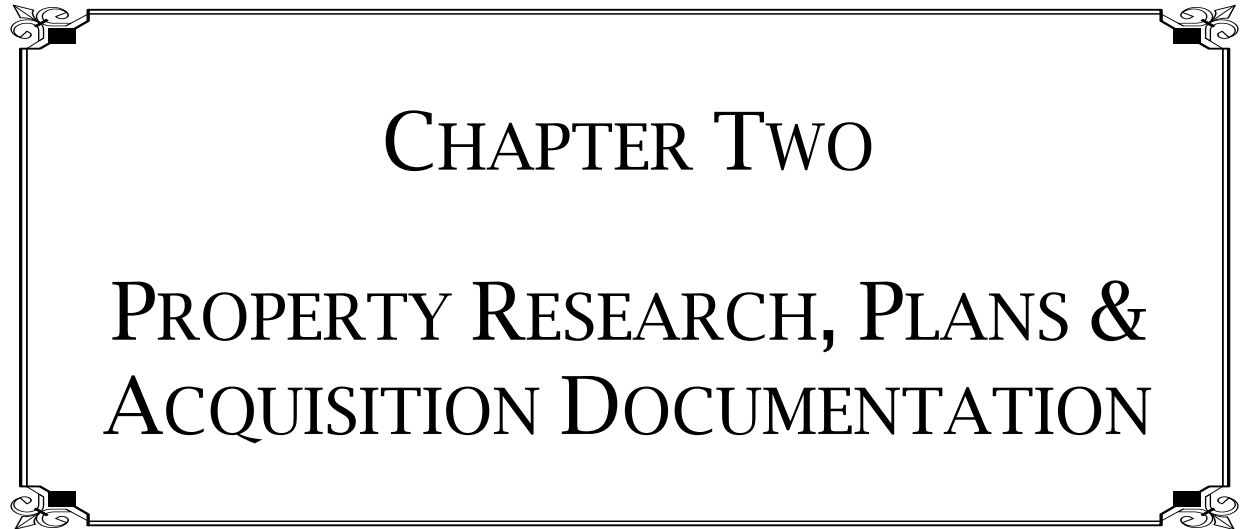
## 1-6 RECORDS MANAGEMENT

Each of the four highway programs maintains right of way records within the program project files. The Program Directors are responsible for the organization, security and storage of files. Operational personnel who create and use file documents are expected to exercise discretion and care as reflected in the following guidelines:

1. Place original documents only (not multiple or duplicate copies) in the project file.
2. Minimize removal of original documents from MaineDOT offices. Use photocopies or written notes if information from documents is needed for reference outside the office.
3. Record personal or financial information only if it is relevant to the program purpose for which a record is kept.
4. Make sure that official forms are completed and blank spaces are lined out before finalizing forms and other official documents.
5. Consult the Chief Property Officer or Senior Property Officer before releasing information from MaineDOT files to any person. MaineDOT right of way documents contain personal and financial information that is protected from public disclosure.

Title 1 **MRSA** Sections 402 and 408 control disclosure of State records for public inspection. Disclosure of right of way records is further controlled by 23 **MRSA** 63. Right of way staff that originate or control official records, including appraisals, negotiation diaries, property owner reports, cost estimates and relocation benefit determinations, should be familiar with these statutes.





# CHAPTER TWO

## PROPERTY RESEARCH, PLANS & ACQUISITION DOCUMENTATION

MAINE RIGHT OF WAY MANUAL

*December 2010*

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# **CHAPTER TWO**

## **PROPERTY RESEARCH, PLANS AND ACQUISITION DOCUMENTATION**

### **2-1 ORGANIZATION AND MANAGEMENT**

#### **2-1.01 Overview of Property Research, Plan Development and Acquisition**

Property Office Survey and Title Office personnel are responsible for gathering and managing real property information, determining existing right of way limits and preparing the right of way plans and acquisition documents necessary to acquire property for MaineDOT projects. The flow of Survey and Title Office work in the project development process is illustrated in Table 2-1. The personnel performing these duties are located in the five DOT Regional Offices or in the central Property Office in Augusta.

Preliminary data gathering of current ownership and important abutting property information is typically performed by technical staff assigned to the Property Office, or recruited from other organizational units as needed. The research and interpretation of physical evidence to determine property boundaries and preparation of plans and property descriptions for acquisition is performed by licensed surveyors or mapping personnel. (For this chapter, this function will be referred to as 'Survey/Mapping'). These efforts are managed by the Chief Surveyor and Regional Professional Land Surveyors.

Title examination to determine all parties of interest in a property to be acquired is performed by qualified title abstractors. Preparation of the complete acquisition document, notification and payment documents for the property owners and recordation of ownership transfer documents are performed by personnel in the Property Office's Title Office. These efforts are overseen by the Manager of the Title Office.

The Property Office Records and Research Unit responds to internal and external requests for information on highway layouts, MaineDOT ownership rights and other data relating to the real property aspects of the transportation system. Research activities include gathering and maintaining documentation relating to MaineDOT's transportation systems and compiling and retaining relevant municipal and county records as needed. A major part of the Research function is to make the information in these public records available to and understandable to, interested parties outside of MaineDOT.

#### **2-1.02 Organization**

Property research, property plan development and property acquisition documentation are the responsibilities of Property Office personnel located in Regional Offices as members of the Regional Survey Teams, or located in the central Property Office in Augusta. Project Managers

and designers from the various program project teams coordinate this work with Region Survey Supervisors and Surveyor/Mapper dedicated to that team or the region where the project is located. The determination of new right of way needs is a collaborative effort between designers, valuation personnel and Survey/Mappers. The Title Office, located in the central Property Office provides mapping support and review services to Surveyor/Mappers, resolves complex mapping problems and performs property title examinations of impacted property owners. The Title Office also handles the preparation of condemnation documents and owner condemnation packages. The Property Office Records and Research Unit in the central office handles public information research functions and maintains an array of right of way and other property records and documents.

Survey/Mapping personnel are drawn from the following classifications:

1. Transportation Aide. This position field locates evidence of property ownership to prepare Property Owner Reports (PORs), gathers and compiles data for right of way documentation, plots and graphs data using computer software programs to assist in map preparation, sorts and files documentation and assists higher level Technicians with project work.
2. Assistant Technician. Typical job duties for an Assistant Technician include drafting right of way maps using computer-aided drafting software; assisting higher level Technicians with the drafting of maps; researching and interpreting legal documents, town records, tax maps, survey plans and ownership documents to interpret right of way limits for straightforward requests; preparing basic documents that serve as legal references, including PORs; and supervising less skilled personnel as needed.
3. Technician. The Technician researches and interprets legal documents, town records and property ownership information to determine property ownership and prepare proposed ownership limits and rights for moderately complex projects; handles PORs functions, including preparing documents and providing training on POR processes; drafts moderately complex documents that serve as legal references; develops moderately complex procedures using computer-aided drafting software; creates software macros for others to use; and supervises other personnel as needed.
4. Senior Technician/Assistant Land Surveyor. This position usually researches and interprets legal documents, town records and property ownership information to determine ownership and draft ownership and right of way limits for complex projects; evaluates and resolves lost boundary roadway layouts and complex wrought portion locations; interprets laws and regulations relating to right of way and property rights; trains, coaches and evaluates skilled and semi-skilled technical personnel; provides information to the public on complex right of way matters; assists in policy development and process improvements; and supervises other personnel.
5. Professional Land Surveyor. This position is responsible for managing the work of the technical/professional personnel performing the survey/mapping efforts from

early property owner information gathering to the development of descriptions and plans for property to be acquired for a project.

### **2-1.03 Project Development Team Activities**

The major Survey/Mapping activities performed for Project Teams, and the personnel responsible for them, are shown in Table 2-1.

**TABLE 2-1 — Survey/Mapping and Title Office Activities in the Team Process of Project Development**

<b>Survey/Mapping and Title Office Activity</b>	<b>Responsible Party</b>
Ascertain existing right of way from MaineDOT records and assemble background map for other Team members.	Surveyor/Mapper
Prepare Names and Addresses List; add data to Names and Addresses Database	Surveyor/Mapper or other qualified program personnel
Initiate POR process, including the completion of POR forms by the property owner and locating property ownership evidence in field (e.g., pins, monuments, fences)	Surveyor/Mapper or other qualified program personnel
Initiate preliminary title investigations, as appropriate.	Surveyor/Mapper
Prepare Right of Way Base Map: existing right of way and tax map property lines for Public Hearing use only.	Surveyor/Mapper
Add Property Owner Report information to Property Owner Report database.	Surveyor/Mapper or other qualified program personnel
Prepare Title Reports.	Title Office Abstractors
Brief Project Manager about existing right of way, especially in the case of prescriptive easement highways.	Surveyor/Mapper
Prepare preliminary right of way plans: existing right of way, property lines from title abstract and POR's, property owner information.	Surveyor/Mapper with review by Title Office Condemnation Unit
Review preliminary alignment prepared by Design Team Member; provide comments on changes needed to avoid undesirable right of way impacts and on project schedule.	Project Team Designer, Appraiser and Surveyor/Mapper
Request additional title work by Title Office for permanent acquisitions, or as necessary.	Surveyor/Mapper
Merge elements of design with relevant property ownership information, topographic data, existing right of way and proposed new right of way; prepare parcel setups (parcel-specific acquisition data) for all necessary acquisitions; request any needed survey topography updates; submit comments to Project Manager on suggested methods to reduce right of way impacts.	Surveyor/Mapper

Survey/Mapping and Title Office Activity	Responsible Party
Order ownership verifications.	Surveyor/Mapper
Verify property ownerships and review title work and plan (includes title updates if required due to passage of 6 months or more).	Title Office
Update Names and Addresses database.	Title Office

**TABLE 2-1 — Survey/Mapping and Title Office Activities in the Team Process of Project Development**  
(Continued)

<b>Survey/Mapping and Title Office Activity</b>	<b>Responsible Party</b>
Review for compliance with Design Plans Impacts Complete standards; merge final design with existing layout; map necessary land and rights to be acquired for project to create final right of way plans; submit completed design and right of way plans to Senior Property Officer; advise Project Manager of any property owner concerns or requests generated during contacts and field inspections.	Project Team Designer and Surveyor/Mapper with review by Title Office Condemnation Unit
Revise plans to reflect any changes requested by Project Team in the nature or scope of rights to be acquired resulting from the negotiations with property owners. These are changes that do not typically require recycling the valuation or other processes...	Project Team Surveyor/Mapper
Prepare Notification List.	Title Office
Update Names and Addresses database.	Title Office
Prepare Notice of Layout and Taking to condemn properties for project.	Title Office Condemnation Unit.
Update title reports.	Title Office
Record Notice of Layout and Taking.	Title Office
Send property owner condemnation packages, consisting of right of way map, copy of Notice of Layout and Taking, and payment check for rights acquired.	Title Office Condemnation Unit
Send copy of Notice of Layout and Taking to Project Team Surveyor/Mapper.	Title Office Condemnation Unit
Refer any unsettled acquisitions to the State Claims Commission 60 days after the date of the recording of the Notice of Layout and Taking.	Title Office Condemnation Unit
Update right of way plans to reflect any changes generated by construction phase activities or parcel settlement activities and to display right of way control information and monumentation.	Surveyor/Mapper or Title Office Condemnation Unit
Provide requested plans and other information for State Claims Commission hearings on unsettled parcels.	Surveyor/Mapper and Title Office Condemnation Unit
Update title reports on parcels with pending compensation settlement agreements.	Title Office
Analyze the process and evaluate right of way performance to find ways to improve it.	All Survey/Mapping and Title Office personnel involved with the project

#### **2-1.04 Decision-Making Milestones and Standards**

The most important decision-making points for Survey/Mapping personnel during the development of projects are:

1. Determine the amount of title work performed for each parcel on a project. Survey/Mapping personnel typically decide this using the title standards developed by the Title Office. However, the treatment of a particular parcel may vary from the standards depending on the needs and circumstances of the project.
2. Identify the areas where there are insufficient road records, or when conditions on the ground vary from record descriptions. Survey/Mapping personnel apply the procedures described in Section 2-6.06(a). Where those procedures do not produce a clear determination, an educated determination must be made based on the existing evidence.
3. Resolve title problems and conflicting property owner claims. This activity occurs to the extent required in order to move a project forward. Collaboration with the Chief Surveyor, the Title Office or the Legal Services Office may be necessary to resolve these issues by interpreting records, ground conditions and the law.
4. Settle conflicts between right of way requirements generated by proposed design elements and the needs of property owners or municipalities. Surveyor/Mappers often act as the “middleman” in these situations. Personnel typically resolve these issues through identification of alternative design elements or mitigation measures that address property owner/municipal concerns.
5. Through consultation with the project Designer and Appraiser, determine the type, size and location of acquisitions. The decisions are based on the design for the transportation facility, right of way acquisition criteria, site conditions and other relevant project characteristics. Project Designers and Appraisers also may collaborate to make these decisions.
6. Complete final right of way plans. A determination that right of way plans are final and meet quality standards results in distribution of the plans to Right of Way Operations Team Members and others who use the plans to complete their project work.

#### **2-1.05 Quality Assurance**

Quality assurance is the set of activities that are performed by Operational personnel in each function to continuously improve the level of performance in meeting MaineDOT mission and goals. Quality assurance is a shared responsibility of all MaineDOT personnel who are involved in Property Research, Plan Development and Acquisition.. This is distinguished from quality control, which is the corresponding management activity that focuses on general right of way

program oversight, conformity of operations to policy and quality of coordination between right of way functions and with other Departmental units.

Elements of quality in the Survey/Mapping function include:

1. Conforming with all State and Federal rules and regulations and MaineDOT criteria relating to right of way acquisitions;
2. Effectively coordinating with the Project Team Members responsible for other project development activities;
3. Consistently working with Project Team Members to identify and resolve in a timely manner all issues affecting the completion of right of way plans;
4. Accurately gathering information on properties and ownership and providing that information to all who need it;
5. Properly maintaining and interpreting right of way records relevant to projects and to public information inquiries;
6. Making reasonable and timely decisions about the type, size and location of the property interests acquired for projects;
7. Assisting survey/mapping consultants retained by the Department as required to ensure timely and quality products for projects;
8. Participating in process and performance evaluations; and
9. Proactively contributing to the continuous improvement of Survey/Mapping policies, practices and procedures so that Survey/Mapping functions reflect industry “best practices” and quality standards.

Survey/Mapping personnel will perform specific quality assurance tasks as determined in consultation with the Chief Surveyor and the Title Office Manager. Following are examples of quality assurance activities that may be performed:

1. Develop a peer review process of evaluating mapping work products with the aim of constructively identifying opportunities for improvement.
2. Perform formal evaluations of the quality and timeliness of consultant work products.
3. Perform 360-degree evaluations of specific mapping processes. This would include participation of all parties involved in the process.
4. Survey Departmental and external “customers” as to the effectiveness of specific Survey/Mapping policies and practices.

MaineDOT will progressively refine quality practices, set goals, develop performance standards and evaluate progress in meeting goals. Quality assurance is the operational-level participation in this process, as distinct from management-level quality control activities.

Chapter 10 provides detailed guidance on the MaineDOT Right of Way Quality Assurance/Quality Control Program. Section 2-6.06(f) describes the specific quality standards for right of way plans.

## **2-1.06 Coordination with Other Functions**

Survey/Mapping activities interface with a number of other MaineDOT functions. The relationship is both as a provider of information and services and as a recipient of information and services. The main points of coordination between Survey/Mapping personnel and other Property Office personnel, or other parts of MaineDOT, are:

1. Planning. The Bureau of Transportation Systems Planning, as well as planning personnel in the Office of Freight and Business Services, frequently requires ownership and description information for existing MaineDOT properties.
2. Design. The design aspects of a transportation project largely dictate the scope of the property acquisitions. Project Team Surveyor/Mappers need to coordinate closely with Designers and Appraisers to help them understand the right of way implications of design work. This close relationship helps to avoid delays in the completion of right of way plans due to late design changes or to unexpected difficulties reconciling the right of way requirements of the design with the conditions in the field.
3. Title Office. This office provides Surveyor/Mappers with property title information for various steps of the acquisition process and helps Survey/Mapping resolve legal questions concerning property ownership. Records and Research Unit act as a resource for the Office of Legal Services in administrative hearings before the State Claims Commission and at judicial trials by delivering relevant information from highway records and MaineDOT property ownership records. The Title Office also prepares plans and exhibits for these proceedings. Coordination occurs both through Project Teams and through the various Property Office Units.
4. Environmental Office. Final right of way plans serve as the basis for calculating potential environmental impacts from transportation projects. However, coordination between Designers, Surveyor/Mappers and environmental personnel on Project Teams occurs throughout the project development process. This assists the Environmental Office in anticipating the scope of impacts that require State or Federal review and approval. Survey/Mapping personnel also assist the Environmental Office with the identification, survey/mapping and acquisition of parcels for mitigation of environmental impacts. This activity takes place both through the Project Team process and as independent projects for compensatory

mitigation. The Environmental Office is made aware of the existence of private water supplies in or near a potential project area through the POR process.

5. Right of Way Valuation. Valuation of property interests for acquisition and disposition requires accurate identification of the type, size and location of the interests. Surveyor/Mappers work with Designers, Appraisers and others involved in valuation activities to prepare the necessary plans.
6. Right of Way Negotiation. Negotiators use right of way plans in their discussions with property owners. Survey/Mapping personnel and Designers work with Negotiators to resolve questions that arise during negotiations about property ownership, the status of improvements on the land and potential property impacts of the transportation project. Coordination with Negotiators takes place in the Project Teams.
7. Property Relocation Services. Relocation planning and the execution of relocation activities require information about property interests to be acquired and the impacts of projects on activities on the adjacent lands. Survey/Mapping personnel work with the Property personnel handling relocation activities to provide plans, ownership information, acquisition options and other information useful to relocation decisions.
8. Utilities and Railroads Services. The Records and Research Unit staff help Utilities Coordinators in the Bureau to identify the rights of existing utility and railroad facilities within a potential project area. Preliminary right of way plans prepared by Survey/Mappers are a tool used to negotiate with railroads and utilities about changes that need to be made to accommodate the proposed transportation project. The Records and Research Unit also provides plans and property ownership information when a new utility or railroad facility is proposed that uses or affects MaineDOT property.

## **2-1.07 Use of Consultants**

On occasion, MaineDOT uses consultants to perform Survey/Mapping functions. Chapter 9 contains information about contracting considerations and processes, including consultant qualification, selection and evaluation. Sections 9-3.03(a) and 9-3.03(b) address the Survey/Mapping activities typically included in these contacts. The Chief or Region Land Surveyor from consultation with the Program Project Manager makes the decision whether to use consultant services on a case-by-case basis. Factors considered include the length of the job, the number of property owners, the nature of the project's location (e.g., urban, rural) and the cost of consultant services as compared to in-house services. Program staff monitors and review consultant performance of Survey/Mapping functions in the same manner as described in Section 2-6.06(f).



## **2-2 RIGHT OF WAY AND LAND RECORDS**

### **2-2.01 Project Records and Data**

At the beginning of a project, Survey/Mapping personnel gather a variety of data. The information includes:

1. Property ownership information, as described in 2-3.01;
2. The finding and locating of property ownership evidence in the field, as described in 2-3.02; and
3. Property related information, using the POR form discussed in section 2-3.03.

Information from the PORs is entered into the Survey/Mapping project file (electronic and hard copy). Completed PORs become a part of the permanent project file. A Names and Addresses (N&A) List is created from property ownership information entered into the N&A database.

Other project records including acquisition parcel descriptions; preliminary and final right of way plans and related data; deeds, Notices of Layout and Taking (condemnation) and other title documents; work permits granted by property owners; condemnation process notices, proof of payments and related documentation; State Claims Commissions referral records; and records pertaining to the administrative or legal settlement of compensation claims for property acquisitions are located in the Title Office.

### **2-2.02 Transportation Systems Records and Data**

The Property Office Records and Research Unit houses property plans and records relating to transportation facilities throughout the State. Property plans have been scanned into electronic images and are available to departmental employees statewide. MaineDOT uses the records for project development and maintenance and operations purposes. Other entities, including municipalities, metropolitan planning organizations and private developers, request information from the records for their own projects, as well as private surveyors and property owners who are attempting to identify property ownership along State highways.

The Property Office Records and Research Unit maintain records and related indices for the following:

1. Right of Way Plans. Recorded final plans from MaineDOT projects showing limits of construction, limits of MaineDOT right of way and project acquisitions.
2. Deed Files. Includes recorded title documents relating to current and former MaineDOT properties, including highways, railroads, ports, maintenance lots, rest areas and mitigation sites. Files include Notices of Layout and Taking, fee and easement deeds, and other ownership records.

3. State Highway Plans. Includes large-scale plans for all State highways and layout descriptions where available.
4. State-aid Highway Plans. Includes large-scale plans and layouts where available.
5. County Commissioners' Road Records. Descriptions of recorded and unrecorded road layouts ordered by county commissioners. Plans are included where available.
6. Town Road Records. Descriptions of recorded and unrecorded road layouts ordered by local municipalities. Plans are included where available.
7. Land Office Records. Historic records of actions by an early State agency that handled the sale of State-owned lands.
8. Section 815 Records. Descriptions of properties subject to 1 **MRSA** Section 815 and their control dates. The Property Office Records and Research Unit manage these records according to the procedures described in Section 2-7.04.

Collectively, these records provide historical and current data on the location and legal status of property interests held or used for transportation purposes. The Property Office Records and Research Unit also maintains records of controlled access acquisition, modification and disposal, as well as agreements and letters of no objection issued to property owners for particular structures and activities on or near MaineDOT property. Many of these records are and will be maintained in the Region Offices.

As MaineDOT completes projects, the Title Office Condemnation Unit updates Plan File, Deed File, State Highway Plans and State-aid Highway Plans records and indices. Updates for other records occur as information becomes available through project work or other means.

### **2-2.03 Availability of Records to the Public**

The Maine Public Records Law, 1 **MRSA** Sections 401 and 402, provides that information in the custody of a State agency that is received or prepared in connection with the transaction of Government business is accessible to the public unless this information specifically is made confidential by law. The Statute applies to information in written, printed, graphic and electronic forms. Under this law, most MaineDOT records are open to public inspection. This includes the records maintained by the Property Office.

Requests for access to Right of Way records protected by 23 **MRSA** Section 63 should be referred to a Senior Property Officer in the program receiving the request. Depending on the scope and nature of the request, the Manager decides whether to provide the requested information. The Manager also may refer the request to the Legal Services Office for action. In general, Right of Way plans, Notices of Layout and Taking, and State or State-aid highway system records are not confidential. Requests for other types of records must be judged against the statutory standards and any applicable public interest in maintaining confidentiality.





## **2-3 DOCUMENTATION OF PROPERTY AND PARCEL INFORMATION**

### **2-3.01 Survey, Tax and Title Information**

The Surveyor/Mapper, or assigned personnel, obtains full-size tax maps of the project study area. Copies of all maps and survey plans within the project area are also collected. Sources for these documents include property owners, municipal offices, previous MaineDOT project files, the registry of deeds and private surveyors. Survey/Mapping personnel obtain additional title information by requesting the Title Office to perform a title search for specified parcels in the project area.

For each parcel of land that may be affected by the project, the assigned mapper or program staff person prepares a summary containing the names and addresses of each owner, the map and lot of the parcel and the parcel deed references. This information is used to create the initial Name and Addresses (N&A) List in a database format as a .dbf file, with data fields for owner name, mailing address, tax map and lot number, and deed book and page reference. The N&A List database is located in a shared folder on the MaineDOT computer system's public (P:) drive and is accessible in read-only format to authorized personnel.

Department personnel use the N&A List to contact property owners throughout the project development and property acquisition processes. The N&A List is updated as other project information is gathered, including PORs, title information obtained by the Title Office and field information from the Survey crews in the Regional Program.

### **2-3.02 Field Investigations**

A critical step in the POR process is finding and locating property pins, monuments, fences and other forms of evidence indicating property line locations in the field. This reconnaissance task can occur before, during or after completion of POR's, but should be done as early in the process as practical. The features are flagged with blue surveyor's tape, an identifying mark is painted on the pavement and notes made on a plan/tax map. A plan with the location of the property evidence features noted is provided to Survey crews so that they may accurately locate these features and include them in the topographic survey information used by Surveyor/Mappers.

### **2-3.03 Property Owner Contacts and Reports**

The Survey Supervisor is responsible for insuring that a POR (Form MR-1) is completed for affected parcels when necessary. PORs may be mailed to the property owners in advance of direct contact with the owner on site, or the POR can be presented during the direct contact with the owner. Contacts solely by mail may also be used if necessary, but they generally prove less effective in gathering the required information. The Survey Supervisor will determine the most appropriate owner contact method, based on the scope of the project and the level of detailed information necessary for plan development. At the time of the contact, the MaineDOT representative informs the property owner that other MaineDOT personnel will be in contact to

discuss the proposed project and its potential impacts. MaineDOT provides a copy of the completed POR to property owners upon request.

The completed POR constitutes one of the principal records in Survey/Mapping. The form contains:

1. Identifying and contact information for property owners;
2. A history of the property's ownership, improvements and utilities;
3. Current occupancy and use;
4. Past survey work;
5. Any special classifications (historic or public use) affecting the property;
6. Any conditions or uses that might require an environmental assessment of chemical or hazardous materials;
7. Property owners' comments; and
8. Any other information that might be relevant to subsequent right of way or other project development activities.

Completion of the POR includes a visual inspection of the property. MaineDOT's representative encourages the property owner to participate in that inspection. Information gathered during the inspection includes the location and types of boundary line markers and the locations of wells, septic systems, fences, walls, outbuildings and any other improvements on the property. Notations are included that describe any discrepancies between deed descriptions and field locations of property boundaries. The individual completing the POR also makes a sketch of the property, showing approximate size and location, improvements, apparent boundary lines and indications of how the lines were established. An approximate North arrow is included on the sketch. Completed PORs must include the signature of the person (preferably a landowner of the parcel) completing or providing the information to complete the POR. It is not necessary that the MaineDOT employee or consultant assigned the POR task to sign the form.

#### **2-3.04 Existing Conditions Plans**

In order to provide more complete baseline plans Regional survey teams delineate and locate routine wetland boundaries. These are later reviewed by staff from the Environmental Office (EO). Regional survey teams also do their own deed and plan boundary research rather than relying only on tax map information.

## **2-4 TITLE INVESTIGATION AND CERTIFICATION**

### **2-4.01 Overview**

Title examinations are the means by which MaineDOT determines who owns property that will be acquired for projects. The Surveyor/Mapper and the Title Office share responsibility for making certain the work is performed on time and in an appropriate manner.

The Surveyor/Mappers request title examinations from the Title Office and rely on the information produced by title examinations for determining property ownership and to assist with resolving property description and boundaries issues. The title reports typically include an abstract of every transaction involving the land or premises in question, including sales, mortgages and outstanding liens. The information is used to prepare plans, draft descriptions for documents transferring title, and determine to whom MaineDOT will make payments for property rights acquired. The process for title examination is the same for MaineDOT personnel and its consultants. A flowchart illustrating the main steps in the title examination process appears in Figure 2-1.

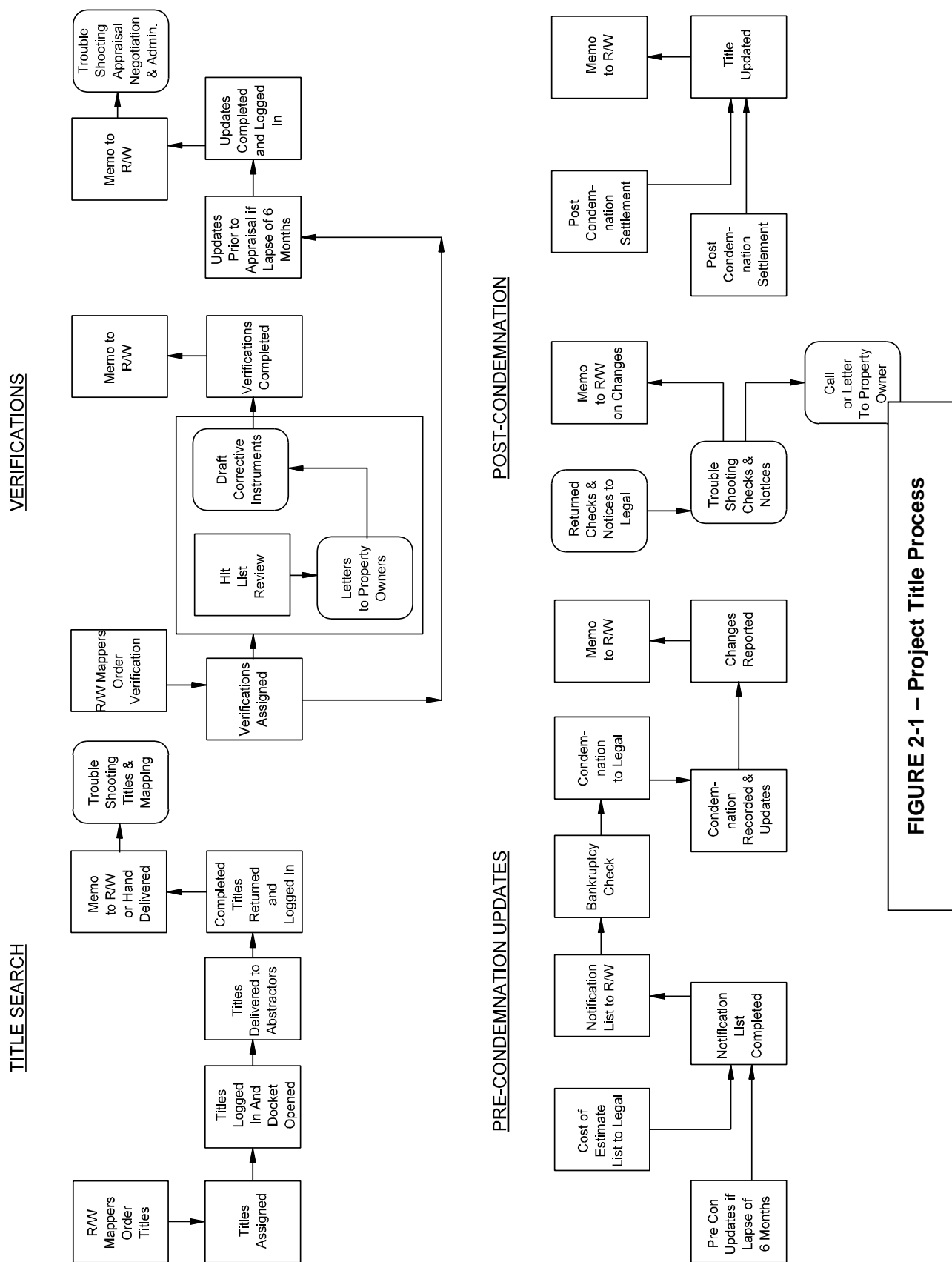


FIGURE 2-1 – Project Title Process

**2-4.02 Title Examinations**

MaineDOT follows the standards established by the Maine State Bar Association for title examinations, including the treatment of clouds and defects in title. Exceptions to those standards are made only with the approval of the Principal Real Estate Attorney in the Legal Services Office. For condemnations, the Title Office and the Legal Services Office worked together to establish modified title examination standards. The decision to adopt modified condemnation standards rests on the fact that condemnation automatically vests title in the State of Maine and removes clouds and defects of title. Nevertheless, the title standards for condemnation are reviewed periodically for their effectiveness. In addition, the standards may be altered by agreement on a case-by-case basis.

One area in which title examination practices have been altered is the required period of title searches. The standards appear in Table 2-2.

**TABLE 2-2 — Title Search Requirements for Condemnation Parcels**

<b>Type of Taking</b>	<b>Limitation on Value of Acquisition</b>	<b>Length of Required Title Search</b>
Fee (all right, title and interest)	None	40 years
Wrought portion (prescriptive easement), major acquisition	None	40 years
Wrought portion (prescriptive easement), acquisition substantially the same as existing area of occupation and use	None	Last acquisition (transfer) to date
Drainage easement	None	Last acquisition (transfer) to date
Permanent easement	None	Last acquisition (transfer) to date
Slope easement	None	Last acquisition (transfer) to date
Temporary construction rights	None	Deed Only Search
Temporary grading rights	No payment made	Current deed only

In cases involving fee acquisitions, the Title Office and the Office of Legal Services typically agree to use a 40-year title search. Exceptions may be made by mutual agreement in some cases if the risk to the State is deemed acceptable.

The Title Office conducts title work that correlate to the level of title examination performed at each stage:

1. Current deed retrieval,
2. Search of title activity since the date of the last acquisition,

3. Search of all title and related records for a full 40-year period, and
4. Rundown and certification of title.

The end products include a description of the property affected, the names to be used for condemnation and the names of other parties in interest (including mortgage holders) who must be involved in the transaction because of the need for releases or other documentation.

#### **2-4.02(a) Current Deed Retrieval**

Current deed retrievals result in the information used in the preparation of preliminary right of way plans for a project. Using title references supplied by personnel handling the preparation of the project N&A Lists and PORs, the title examiner obtains copies of the current deed description for all properties abutting the proposed project location. Copies of the descriptions are given to the individuals preparing the preliminary right of way plans for use in the initial placement of property lines.

#### **2-4.02(b) Deed Only Searches**

This level of title investigation is used when the Project Team anticipates that it will only need temporary property rights. A deed only search is a simple compilation of the current deed, a Grantor schedule only of the current owner from their acquisition forward and an abbreviated cover sheet.

#### **2-4.02(c) Acquisition to Date Examinations**

Once the Project Team determines the anticipated right of way acquisition needs for a project, acquisition to date titles are prepared for all properties that may be affected by the acquisition of either temporary or permanent rights. This work provides Surveyor/Mappers with the information necessary to move forward with more detailed plotting of property lines and other property information. This title work identifies critical information including current owner, any transfers out since last acquisition and outstanding mortgages and liens against the property. Acquisition to date title packages include:

1. A copy of the deed to the current owner;
2. A drawing or sketch based on the property description in the current owner's deed;
3. A summary title report that provides:
  - a. A schedule of all index entries for the current owner from the deed into that owner, up to the date that the title investigation commenced (the same date is used for all titles on a project);

- b. An abstract of all instruments in the chain of title from the current owner forward, together with copies of any instrument in that chain that includes a change in description or other pertinent new material;
  - c. A summary chain of title showing all instruments of record resulting from the schedule of index entries and;
  - d. A cover sheet showing the owner of record;
- 4. A project inventory listing all of the owners of record by parcel number; and
  - 5. A listing identified by parcel number, of problems that need to be resolved and a report on any measures to cure or additional information gathered by the Abstractor.

Surveyor/Mappers sometimes need additional title information in order to complete the accurate plotting of property lines. They request that supplemental title work from the Title Office.

#### **2-4.02(d) 40-Year Title Examinations**

Once the final scope of the project is established, the Surveyor/Mapper requests full 40-year title examinations for all proposed project acquisitions that fall within the 40-year search requirements contained in Table 2-2. Abstractors perform these examinations in accordance with the standards of the Maine Bar Association except where the standards are modified by the Title Office and the Office of Legal Services. The results of the 40-year examinations are used in final right of way mapping, property valuation and acquisition activities. The Title Office prepares the Notification List information, which includes the names and addresses of each party with a title interest in a parcel, as well as any party with a financial interest. The Title Office Condemnation Unit uses the information for document preparation, vouchering of checks and delivery of condemnation packages and other notices to landowners.

The status of project parcel titles is updated once the Senior Property Officer completes valuation and negotiation activities, but no more than 6 months prior to the scheduled acquisition date. The Title Office submits to the Surveyor/Mapper a memo summarizing any ownership or mapping related changes. Survey/Mapping uses this information to update the N&A List, and make any mapping changes.

#### **2-4.02(e) Rundown and Certification of Title**

To insure that MaineDOT acquires rights from the proper parties and makes payments to the proper parties, the Abstractor verifies the title immediately prior to recording any voluntary acquisition documents. When recording the Notice of Layout and Taking, the Abstractor records the Notice first, and then updates the titles through the date and time of the recording. The Title Office delivers to the Title Office Condemnation Unit a copy of the recorded Notice or deed that MaineDOT has acquired good and sufficient title to the properties. The Chief Property Officer relies on this document when they execute a Right of Way Certificate (Form AD-3)

certifying that MaineDOT has the necessary rights to construct the project as designed and that all applicable Federal and State requirements governing these acquisitions are satisfied.

### **2-4.03 Liens**

Generally, MaineDOT relies on condemnation to automatically extinguish any lien holder interest in the property acquired. Whenever the acquisition is accomplished by voluntary deed rather than condemnation, a lien holder's interest in the part acquired is terminated only when the lien holder executes a release of the lien against the property in question. MaineDOT uses a modified standard for handling the clearance of mortgages and other liens on voluntary and involuntary acquisitions:

1. Fee Acquisitions. Where a property owner is awarded the minimum payment amount for the fee ownership of the part acquired, MaineDOT does not name lien holders on the payment check. For any fee acquisition valued at more than the minimum payment amount, any recorded party with a financial interest is included as a payee on the acquisition check.
2. Permanent Easement Acquisitions. Lien holders are named as check payees on all transactions valued at more than \$1000.
3. Temporary Rights Acquisitions. Temporary rights, which are valued at no more than the minimum payment amount, do not require the naming of lien holders as payees.

### **2-4.04 FERC-Licensed Properties**

All bridge projects located in the area of a dam or hydro-facility require special title examination measures to determine whether there is Federal Energy Regulatory Commission (FERC) involvement affecting any parcel. Survey/Mapping personnel, as well as all other project personnel, notify the Title Office if any evidence of a dam or hydro-facility is found within the project area.

Because the State of Maine cannot condemn against a parcel over which a FERC license runs, MaineDOT usually acquires a highway easement from the hydro-facility licensee, who typically also is the property owner. Fee acquisition of these parcels is possible through a complex and time-consuming Federal process. If that type of acquisition is required, the Title Office works with the hydro-facility licensee to obtain the mandatory pre-approvals from FERC.

### **2-4.05 Scheduling Title Work**

The scheduling milestones for project title work are the ordering of titles, request for verification and pre-acquisition updates. As soon as the Surveyor/Mapper has sufficient information on a project, the Surveyor/Mapper coordinates with the Title Office to establish estimated dates for these milestones. The parties also review the tentative scope of project title work in terms of the

number of parcels, the length of title search needed for the parcels and any special problems known to the Surveyor/Mapper. This permits the Title Office to schedule title examiners for the work and helps to insure that the Project Team will receive the completed work when it is needed.

#### **2-4.06 Other Title-Related Functions**

##### **2-4.06(a) Recording**

The Title Office Abstractors handle the recording of condemnations, deeds and other title documents in the appropriate county registry of deeds. After recording, it reports the recording information and any changes in titles to the Condemnation Unit so that property owner checks and condemnation packages can be mailed out immediately. If the title examiners do find changes in ownership, the Condemnation Unit holds the checks for the affected parcels. A memorandum is prepared that identifies the modifications needed to the checks and plans. The Condemnation Unit also adds the recording information to the final right of way plans.

##### **2-4.06(b) Resolution of Title Problems and Legal Issues**

Title defects often are discovered during parcel title examinations for MaineDOT projects. The Title Office takes the lead in working with owners to resolve the defects before MaineDOT's acquisition. Survey/Mapping personnel provide support for this activity. Typical issues include:

1. Title or mapping inconsistencies,
2. Boundaries,
3. Riparian rights,
4. Road and right of way locations,
5. Unknown owners,
6. Additional owners,
7. Estates, and
8. Missing interests.

The Title Office gives notice of the defect to the owner by a letter, which often includes a suggested solution. The Title Office often also prepares the documents needed to cure the defects, including deeds, easements, discharges and agreements. A copy of the executed and recorded document then becomes a part of the parcel's title report, and the Surveyor/Mapper is notified of any resulting changes to the parcel.

In accordance with Maine Law Title 23 Section 154 MRSA, the Department shall serve a check in the amount of the determined net damage to the owner or owners of record. In the case of multiple ownership, the check may be served on any one of the owners. The Department will name as payees entities that have mortgages, liens or other encumbrances against the property. The Title Office works with property owners to solve problems when acquisition checks are returned to MaineDOT because the owners are unable to cash the checks as needed.. This

can happen for a variety of reasons. MaineDOT personnel must document conversations in these cases and include both those conversations and any other documentation as a part of the title report.





## **2-5 DOCUMENTATION FOR THE ACQUISITION AND DISPOSITION OF PROPERTY**

### **2-5.01 Types and Legal Description of Interests Acquired**

MaineDOT acquires many different types of property rights. The scope and type of right acquired depends on the project's requirements and the characteristics of the land in question. The types of property rights MaineDOT most frequently acquires are described below:

1. Fee Title. MaineDOT acquires all right, title and interest in and to the described property. This type of interest usually is acquired for major components of transportation facilities, like roadbeds. This is the preferred type of acquisition.
2. Permanent Easement. This easement provides the right to enter and perform the activities described in the easement. The acquisition document includes a description of the location of the easement, the purposes for which the easement is acquired and any special terms governing the use or term of the easement. The property owner retains all other rights to the property. Permanent easements are frequently used for drainage and slope areas. Most often they are used where MaineDOT does not expect that there will be a need to enter the property for maintenance or repair on a frequent basis, so that full fee ownership is unnecessary.
3. Temporary Rights. These are similar to a permanent easement, except that the rights last only for a specified period of time. A typical example is a temporary construction right for staging work.
4. Wrought Portion or Prescriptive Easement. This easement is acquired by occupation and use of the property that is subject to the prescriptive easement. Typically found where a roadway has been in use for more than 20 years, but there is no record of either a governmental order of layout for the road or a voluntary grant of rights to the public. Section 2-6.06(a) describes the procedures for wrought portion highways.
5. Access Control. Similar to the acquisition of development rights, this right creates a prohibition that prevents all or specified types of access directly to the highway from abutting properties. This includes limited use access agreements that permit only agricultural or residential access to the highways. Acquisition of access control is required in most areas of the Interstate Highway System and in certain areas of intersecting roadways. Acquisition of access control rights elsewhere is done as appropriate to the needs and conditions of the highway as determined under MaineDOT's Access Management Program (See Sections 7-7.01 and 7-7.02).
6. Work Permits or Rights of Entry. Short-term agreements giving MaineDOT permission to go onto land to begin preliminary project work. Generally used where valuation and acquisition activities are not yet complete. These rights do not allow for future maintenance activities and are not to be used in place of easements or fee simple acquisitions for features extending outside the existing right of way. Pre-approval from the Property Office Director is required if these are to be used.

The property rights described above are contained in forms (see Appendix C) that are part of the MaineDOT electronic database.

## **2-5.02 Acquisition and Disposal Methods and Practices**

MaineDOT may acquire land by voluntary deed or by involuntary transfer through condemnation proceedings under 23 **MRSA** Section 154. In both instances, the Title Office Condemnation Unit prepares the acquisition documentation. The Title Office Manager reviews and approves all acquisition documents.

### **2-5.02(a) Voluntary Acquisitions**

MaineDOT uses voluntary deeds for non-project acquisitions, including mitigation sites or single parcel transactions, and for project acquisitions that require different timing than the scheduled project condemnation. Individual documents of acquisition may include deeds, easements, leases, work permits and other legal documents. Voluntary deeds may use a quitclaim or warranty format that includes a description of the property and a reference to the relevant right of way plan or individual parcel survey for the property. The Title Office records the voluntary deed in the registry of deeds for the county in which the land is located. The Condemnation Unit sends a notice of the transfer, together with a copy of the deed and of the preliminary right of way plans, to the county commissioners, local assessor, and town or city clerk. When the deed is returned from the registry, it is added to the Property Office Records and Research Unit's Deed File. The recording reference is added to the right of way plan for the area.

Voluntary deed transactions also may require the preparation and recording of releases for mortgages and other liens affecting the property acquired, as discussed in Section 2-4.03. The Title Office handles the drafting of the release or the review and approval of form release documents provided by the lien holder. Any required releases are recorded with the voluntary deed from the property owner.

### **2-5.02(b) Condemnations**

The condemnation process, which is the exercise of eminent domain authority, involves statutorily mandated procedures contained in 23 **MRSA** Sections 154 through 159. Condemnation is the preferred method of acquisition for transportation projects because of the quality of title it provides to MaineDOT. Condemnations take place a minimum of 28 days after the Project Team Member completes initial negotiations with property owners, unless all owners settle.

Normally, a project condemnation is done by means of a single Notice of Layout and Taking that includes all property rights for the project, regardless of whether the compensation amount is settled or unsettled with the property owner. The steps taken by the Condemnation Unit for a condemnation include the following:

1. The Condemnation Unit prepares the Notice of Layout and Taking using the final right of way plans for the project and the Notification list provided by the Title Office. The Notice includes a description of the interests acquired from each property owner, the parcel number for the interest, the names of the apparent owners, and the location and station on the preliminary right of way plans for the right acquired.
2. The Condemnation Unit sends a project voucher to the Bureau of Finance and Administration requesting it to prepare and issue checks for payment of the compensation for the acquisitions to the parties indicated in the Notification List.

The Condemnation Unit assembles the condemnation package for each parcel. The package includes a copy of the preliminary right of way plan section that includes the parcel, the payment check, the Notice of Layout and Taking and a Statement of Determination of Damages that describes the enclosures, the compensation to be paid and any rights of appeal that apply. In some cases, changes in the title that are noted during the update done at the time of condemnation may require re-vouchering of the compensation check.

3. Once the Notice of Layout and Taking is recorded, the Condemnation Unit mails the condemnation packages by registered or certified mail or delivers them by personal service. In the case of multiple owners, MaineDOT may deliver the condemnation package to any one of the owners.
4. The Condemnation Unit publishes a notice of the condemnation in a newspaper of general circulation in the county where the property is located.
5. The Condemnation Unit sends municipal officials, the local assessor and the county commissioners a copy of the Notice of Layout and Taking and a copy of the preliminary right of way plan.
6. Within 1 year of the recording of the Notice of Layout and Taking, the Condemnation Unit sends the final right of way plans to the registry of deeds for recording as required by 23 **MRSA** Section 154.

### **2-5.02(c) Disposals**

Disposal procedures depend on the nature of the property in question and the party to whom MaineDOT intends to convey the property. Disposal of real property is addressed comprehensively in Chapter 7.

Disposition of excess or surplus land most commonly is done pursuant to 23 **MRSA** Section 61:

1. Vacation. Transfers land or any part of land acquired for a transportation project back to the person in whom title was vested at the time of acquisition, and that owner's heirs and assignees. The Records and Research Unit updates the Right of Way map and prepares the legal description for the Deed of Vacation using a

quitclaim deed format. The description is incorporated into the deed prepared by the Title Office for signature by the Commissioner of Transportation. The Condemnation Unit notes the area vacated, together with the recording references for the Deed of Vacation, on the most current right of way plans for the area.

2. Sale. Transfers land or other property interests that are no longer necessary for transportation purposes to a party other than the original owner or that owner's heirs and assignees. The Records and Research Unit updates the Right of Way map and prepares a legal description for the quitclaim deed. The description is incorporated into the deed prepared by the Title Office for execution by Maine's Governor. The Condemnation Unit notes the area sold, together with the recording references for the Governor's Deed, on the most current right of way plans for the area. Note: Any sale of property acquired with Title 23 federal funds needs FHWA approval if that sale will be made at less than Fair Market Value.
3. Note that 1 MRSA Section 815 provides the condemned property owner the right of first refusal in some unique circumstances for parcels purchased after October 1, 2001. This law **does not** apply if:
  - a. The property was purchased by deed or friendly condemnation or;
  - b. Was taken in whole or in part using federal funds or;
  - c. The authority to acquire the property by eminent domain was derived from federal law or ;
  - d. The lot does not meet state or municipal lot size or frontage requirements or;
  - e. The property was taken to expand existing corridors used for transportation purposes.

The right of first refusal automatically terminates once the property is used for the project or purpose for which that property was taken.

If it appears that an acquisition might fall under 1 MRSA Section 815, that acquisition should be flagged in the event the public purpose for the acquisition needs to be reaffirmed.

4. Lease. Permits the use of MaineDOT property by others pending the use of the property for transportation purposes. The Title Office prepares the lease and the Condemnation Unit provides the property description and a plan segment, if needed.

#### **2-5.02(d) Discontinuances**

MaineDOT may terminate the State or State-aid highway status of a roadway by means of discontinuance pursuant to its powers under 23 **MRSA** Section 651. The Records and Research Unit prepares the discontinuance order, including a description of the area affected. The order is signed by the Commissioner of Transportation and recorded. Recording references and location information are noted on the right of way plans for the highway. The

town or county originally responsible for the roadway becomes liable for its maintenance thereafter.

Upon request, the Condemnation Unit also prepares discontinuance orders for county commissioners and municipal officers when those officials decide to discontinue a county or town way that lies outside the limits of a new State highway constructed by MaineDOT. These orders, pursuant to 23 **MRSA** 2060(1), must reference the recorded MaineDOT right of way plan for the new State highway. Upon discontinuance, the interests of the county or municipality pass to the abutting property owners in accordance with the provisions of 23 **MRSA** Section 2060(2).

### **2-5.02(e) Establishment, Modification and Release of Access Control**

Sections 7-7.01 and 7-7.02 outline MaineDOT's objectives for access management and control. MaineDOT controls access to the highway system by 2 principal means. The first is the permit process for entrances. The regulatory system arises out of MaineDOT's obligation to manage the number, placement and use of entrances, driveways and approaches onto the highways pursuant to 23 **MRSA** Section 704. MaineDOT's role is to protect and promote the safety of the traveling public and to maintain the highway drainage and other aspects of the highways. In the case of arterial highways, the control of entrances also is intended to permit highway users to maintain travel speeds at the posted limits. By statute, MaineDOT must deny any permit request in a location for which MaineDOT owns the access control rights. The only circumstances for which access control may be broken are for state or state aid highways.

The second method of establishing control is the acquisition of all or a part of a parcel's access rights by condemnation or voluntary deed. This may occur as a part of a project or as an independent acquisition. Acquisition is used most often with controlled access highways, as provided in 23 **MRSA** Sections 301 through 303, and limited access highways. MaineDOT makes these acquisitions to manage the safety and capacity of its highway systems.

The Records and Research Unit maintains records of all rights of access control on MaineDOT highways. All project plans include the location and title references for access control rights acquired by MaineDOT within the project area. Developers seeking project approval under 23 **MRSA** Section 704-A, as well as those seeking new or modified entrances under 23 **MRSA** Section 704, contact the Records and Research Unit for information on any MaineDOT-held access control that may affect their applications.

When a non-project access control transaction takes place, a Commission Record item is prepared by the Property Office for approval by the Commissioner of Transportation. After Commissioner approval, the Property Manager sends it to the Condemnation Unit. The Property Manager adds the new information to the access control files and the Condemnation Unit updates the relevant right of way plans. Access control acquired as part of a project is included in the right of way plans prepared for the project. The Surveyor/Mapper notifies the Condemnation Unit of the new controls once the locations and scope of the controls are final.



## **2-6 RIGHT OF WAY PLANS**

### **2-6.01 Overview**

Right of way plans depict the lands and rights in land necessary to accommodate MaineDOT transportation projects. Because right of way plans are used for multiple purposes, including project cost estimates, acquisition and owner compensation, the accuracy and completeness of the plans are critical to project success. Right of way plan preparation, or mapping, takes place in preliminary and final stages.

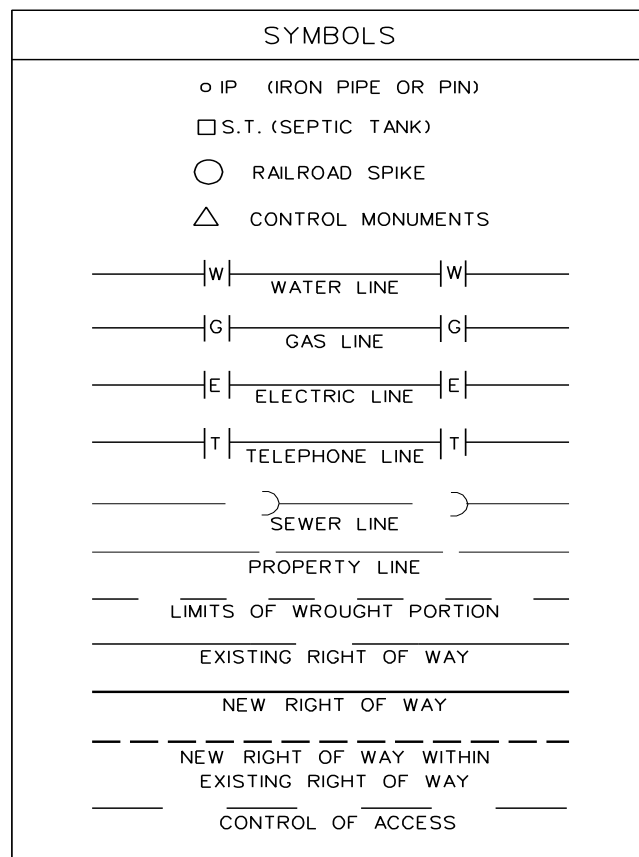
Project Teams use preliminary right of way plans for public information meetings, relocation planning and other early activities. The plans show items including existing right of way, property features, apparent property boundaries and utility locations. Final right of way plans show all project elements, including the limits of new construction and of new right of way. They are used for valuation, negotiation, acquisition activities including condemnation, utility relocation, relocation of residential owners and tenants, business relocations and environmental reviews and permitting.

As illustrated in Table 2-1, Right of Way Surveyor/Mappers engage in problem solving and team coordination throughout the project development process. The steps involved in the right of way mapping process are described in Sections 2-6.03 through 2-6.05 and shown in the Right of Way Mapping Project Check List

### **2-6.02 Plan Format and Computerization**

All right of way plans must conform to State and Federal standards, specifications, policies and procedures. The symbols used in MaineDOT right of way plans appear in Figure 2-2.

MaineDOT uses Microstation and In-Roads computer-aided drafting and design (CADD) software, a product of Bentley Systems, Inc., to create its right of way plans. Current conventions for Working Units, Global Origin, Level Structure, File Names, File Content, Line Styles, Line Weights, Fonts, Cells, Color Table and other items are available on the Internet at <http://www.state.me.us/mdot>. Consultant plans must comply with the specifications described on the MaineDOT Microstation Information Pages online at <http://www.state.me.us/mdot>.



**FIGURE 2-2 — Right of Way Plan Symbols**

Chapter 9 of the *MaineDOT Microstation Manual* contains detailed information about creating right of way plans using Microstation. The information is available in electronic form at <http://www.state.me.us/mdot/cadd/microstation/manual.htm>. The *MaineDOT Microstation Manual* includes command references, how-to instructions on general functions, directions for creating a base line, process descriptions for sheeting and batch plotting and information on using the settings manager, right of way level standards and general operations. Bridge-level, highway-level and topography-level structures are included in the appendices.

### **2-6.03 Right of Way Base Map**

The survey editor sends the Project Team Surveyor/Mapper an electronic file for the preliminary survey plan (mifiled plan), which the Surveyor/Mapper uses to develop the right of way base maps for a project. MaineDOT uses right of way base maps for public meetings or public hearings, but does not rely on right of way base maps for acquisition descriptions. The right of way base maps include:

1. Project base line;
2. Topography including existing traveled way, cross culverts, buildings, utilities, property markers and other miscellaneous items from survey and POR data;
3. Existing rights of way, with detailed source references, based on a search of MaineDOT plan files, deed files and layout records for state, county and town roads and railroads; and
4. Property line locations based on existing conditions plan.

### **2-6.04 Preliminary Survey/Mapping Process**

The preliminary mapping process builds on the right of way base map, adding verified ownership information, requirements for the new right of way, and other details relating to the project and the affected properties. Surveyor/Mappers use the title reports and PORs for the project to plot property ownerships on the right of way plans. Surveyor/Mappers plot out the parcel descriptions provided by title examinations and check them against the property lines as reported by the field inspections. Surveyor/Mappers must make judgments about conflicts that appear between statements of bearings, missing courses and other obvious errors. Deeds and other documents frequently give distances in rods, which usually are approximations of the actual distance. A similar situation exists with distances shown on old town plotting plans and other plans. Physical evidence of boundaries prevails over deed distances, but Surveyor/Mappers often must eliminate or compensate for those conflicting items and use their best professional judgment. In doing so, Surveyor/Mappers take into consideration the intent of the deed as applied to physical evidence. If there are serious discrepancies that the Surveyor/Mapper cannot resolve logically, then further field investigation, and possibly additional title examination, is required.

Once the Project Team Design Member supplies the Surveyor/Mapper with the CADD files for the preliminary design plans, the Surveyor/Mapper, Project Designer and Appraiser collaborate to determine the new right of way required for the project. The new right of way size and configuration are directly related to the following considerations:

1. Design Characteristics of the Transportation Facility. This includes pavement and shoulder width, median type, drainage, clear zone requirements and other special features. Standards for right of way widths are discussed in Section 2-6.06(b).
2. Type of Property Traversed By the Facility. Examples of different types are improved land with buildings, raw woodland and cropland. Where safety considerations permit, MaineDOT generally reduces right of way widths in front of improvements, including houses and other major structures, to minimize project impacts and right of way acquisition costs.
3. Utilities. Right of Way requirements relating to the relocation of utilities.
4. Special Project Needs. This includes mitigation projects, ferry terminals, cargo terminals, airports, railroads and other non-highway facilities. In these cases, MaineDOT acquires sufficient land and other property rights to properly construct and maintain the facility and insure protection of the public investment in it.
5. Maintenance. This includes maintenance needs for future maintenance activities related to maintaining the roadway or structure.

Working with the right of way and design levels of the project CADD files, the Surveyor/Mapper, Designer or CADD technician and Appraiser overlays the design features on the right of way plans and develops the tentative new right of way limits for the project. The Surveyor/Mapper or Designer also checks to insure the apparent property lines, property owner names and other features shown on the plan layers are consistent with each other and with the information in the PORs for the project. Inconsistencies are investigated and reconciled.

Preliminary plans must contain the following data:

1. Property lines plotted from deed, property owner information and existing plans, as correlated to the property markers located in the field. Focus is on the location of the parcel frontage and sideline boundaries. The back line of lots is shown where practical based on the size of the lot and the plan size. Right of way plans are not property survey plans of all properties impacted by the project. Despite the wider margin of potential error permitted for right of way plans as compared to surveys, the need for accuracy dictates that it is not acceptable practice to reproduce property lines solely and directly from tax maps.
2. Existing easements and other property rights, including limited, conditional and full access controls held by MaineDOT. These rights are located and identified on the plans.

3. Depiction of each parcel, with the setup information on the name of the property owner, the parcel number assigned by MaineDOT and the total parcel area. Setups contain the acquisition item number, owner name(s), each right acquired from the parcel and total area of acquisition for each right.
4. Plotted locations of other parcel/property features, including wells, septic systems, water lines and underground utilities.
5. Existing centerline alignment and controls, tied into any existing centerline alignments from previous projects in the area. This information is drawn primarily from the records maintained by the Property Office Records and Research Unit.
6. References to information sources used to prepare the plan, including surveys, MaineDOT plans (by file number) and town or county layouts.
7. If prepared by a consultant, the name of the preparing firm on each plan sheet together with the endorsement: *"Apparent property lines and existing right of way determined and plotted by: \_\_\_\_\_ (fill in name) \_\_\_\_\_"*

The Surveyor/Mapper distributes hard copies of the preliminary right of way and design plans to the Project Team Right of Way Operations, Utilities and Environmental Members; the Project Manager; and the Title Office. The Surveyor/Mapper also requests from the Title Office any additional title work needed for permanent acquisitions.

Along with the preliminary right of way plan, a plan may be prepared using aerial photography. If the plan was prepared in Microstation, aerial images can be digital and downloaded directly into Microstation, or scanned images from hard copy aerial photographs. A mosaic is then created from the photographic data. The resulting photographic level becomes a part of the project plan files and is manipulated as needed.

The preliminary right of way plan files are used to generate the public hearing plan for the project. In some cases, the hearing plan displays alternative project locations and right of way impacts. The apparent property line locations often are copied from tax maps for public hearing plans only. These locations later are verified through the plan development process.

Where consultants prepare preliminary right of way plans for a project, the consultant coordinates with the Surveyor/Mappers during production. The consultant delivers the completed plans and related materials to the Surveyor/Mappers assigned to the programs for final review and acceptance by the Title Office Condemnation Unit.

#### **2-6.05 Final Mapping Process**

The final mapping process begins when design plans meet the Design Plans Impacts Complete standards. Design plans can be used for final right of way plans when they contain the

information shown in Table 2-3. In addition to the information from the design plans, the consideration is also given to information generated at the public hearing on the project (Step 8 of the Team Process of Project Development). A review of the hearing transcript can be performed to identify any issues or commitments that may affect right of way requirements.

**TABLE 2-3 — Design Plans Impacts Complete**

Design plans are at the impacts complete level when the plans include the following items:

- ☐ Cross-sections that show the proposed limits of slopes and new construction.
- ☐ Locations and limits of driveways and entrances to be constructed.
- ☐ Percent of slope of drive and entrances, both existing and future.
- ☐ Type of surface treatment on drives and entrances.
- ☐ Locations of curbing, sidewalks and islands, including their geometrics.
- ☐ Locations and design of approach roads to be constructed.
- ☐ Locations, lengths and skew of drainage structures to be installed, including culverts, down spouts, berm ditches, storm sewer systems, channel diversions and all outlet ditches.
- ☐ Interpolated water flow beyond excavated ditches along old ground to proposed right of way.
- ☐ All clearing limits and individual trees and shrubs to be removed, regardless of size or pay (compensation) status.
- ☐ Location of any structures to be installed outside of the proposed new right of way (retaining walls, etc.).
- ☐ List of all buildings, structures and other improvements to be removed as part of the project.
- ☐ Bearings on base line.
- ☐ Geometrics, including line change date (ties to survey line and side roads).
- ☐ Beginning and end of project stations.
- ☐ Locations of all signal poles, special street lighting, etc.
- ☐ Poles, conduits, junction boxes, desired power sources for signal poles, special street lighting, etc.
- ☐ Existing utilities on plans and cross sections with proposed new locations.
- ☐ Proposed guard rail.
- ☐ Overhead signs.
- ☐ Evidence of Designer review.

Final right of way plans add the following information to the work done in the preliminary plan stage:

1. Construction limits and items;
2. New right of way limits, including slope, clearing and wrought portion limits;
3. Permanent and temporary easement limits;
4. Updated parcel setups;
5. Acquisition stations and offsets;
6. Condemnation distances, including base line and boundary lines;
7. Easement limits and property lines tied into the base line;
8. Calculated areas of acquisition or take for each type of acquisition (fee, easement, etc.);
9. Inside distance calculations;
10. Notes for special items like reserved areas and truck lanes;
11. Total areas of property ownership calculated from the best available property information;
12. Plan title block, including the MaineDOT file number; and
13. Right of way plan disclaimer.

The Surveyor/Mapper does a final check on all calculations and other plan data. Then the Surveyor/Mapper reviews the final plans with the Title Office Condemnation Unit to insure quality and conformity with MaineDOT standards, as discussed in Section 2-6.06(f). Once the review is complete, the Surveyor/Mapper distributes hard copies of the final right of way and design plans to the Senior Property Officer, Utilities, and Environmental Members; the Project Manager; and the Title Office. The Surveyor/Mapper also sends to the Project Team Right of Way Operations Member additional project materials, including title cover sheets, PORs and an updated N&A List.

Prior to condemnation, the Surveyor/Mapper updates the plans to reflect any ownership changes found through the title verification process. The Surveyor/Mapper follows a similar process once the condemnation is completed, and also adds the condemnation recording references to the plan. After construction, the Surveyor/Mapper revises the final plan to show survey and right of way controls and monumentation, sufficient to reestablish the centerline in the future. Changes also are made to show right of way modifications that occurred during construction.

Once changes are finished, the Surveyor/Mapper certifies the final plans as complete and sends electronic and hard copies to the Title Office Condemnation Unit for recording in the appropriate registry of deeds, as required by 23 **MRSA** Section 154, and for filing in the Right of Way Plan File. A hard copy of the final plans also is sent to the Maintenance and Operations Division in which the project is located.

## **2-6.06 Basic Mapping Practices**

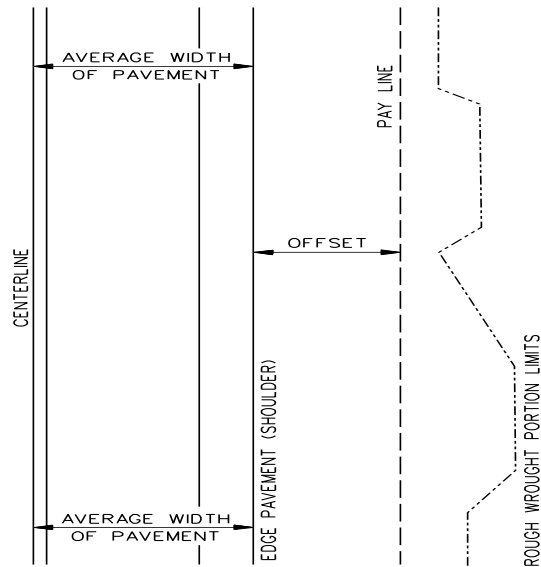
### **2-6.06(a) Establishing Existing Right of Way Limits: Layouts and Wrought Portion**

The first step in establishing the existing right of way in a project area is to check the layout records in the Property Office Records and Research Unit. Those records include previous MaineDOT projects, layouts ordered by county commissioners and layouts issued by town officials. Layout orders contain location descriptions for the roadway and typically include the width of the layout (usually 3-rod or 4-rod).

Where the best available records are town or county layouts, the field conditions often will indicate that the occupied right of way varies from the layout description. Where there is a significant deviation, and in cases where no layout record or only an incomplete layout record can be found, the public rights in the existing right of way rest on a prescriptive easement. These areas are known as the wrought portion of the right of way. MaineDOT must establish the wrought portion limits on a project in order to determine the limits beyond which property owners are entitled to compensation.

MaineDOT may use either of 2 procedures to handle wrought portion right of way on a project. The preferred procedure is designed to set a pay line that is inside the actual limit of the wrought portion. By creating a pay line inside the actual wrought portion limit, the rights of property owners to compensation are fully protected. This process is suggested when additional acquisitions will be necessary beyond the wrought portion limits for the majority of the project length. Establishing this corridor width involves the following steps:

1. Research the right of way to determine that there is no record layout or that the record layout has no stated width.
2. Field check the area in question to determine the approximate limits of the wrought portion area. Locate landmarks and historic features including fences, fence posts, tree rows, stone walls, corner stones and other monuments. Other important indicators are sidewalks, shoulders, ditch lines, the tops of cuts and the toe of fills.
3. Determine the average existing pavement width by measuring in multiple locations. Where minor width variations exist, measurements every 2,500 ft (750 m) are sufficient. Where there are major variations or obvious changes (including wider shoulders, shifts from shoulder to no shoulder, etc.), measure the width of each identifiable segment separately. Where segments are less than 1,000 ft (300 m) in length, at least 2 measurements must be taken that are representative of the segment.



**FIGURE 2-3 — Establishing a Pay Line Offset for Wrought Portion Highways**

4. Establish a pay line at a distance equal to the average of the pavement width plus the pay line offset, as illustrated in Figure 2-3. The pay line offset is a minimum of 5 ft (1.5 m) outside the average width of pavement on each side, concentric or parallel to the centerline. The pay line is centered on the center of pavement and should be of uniform width through the length of the segment or project. This creates an average offset to apply throughout the project, unless very distinct differences between portions of the project merit a case-by-case review of the proposed offset. The pay line offset area is presumed to be a maintained part of the roadway and within the wrought portion limits as defined by Section 653.

The second procedure available to MaineDOT is to reestablish the boundary of the roadway through the statutory steps outlined in 23 **MRSA** Section 653. MaineDOT typically uses statutory reestablishment when the boundary lines, limits or location of a State or State-aid highway are lost, uncertain or doubtful but the wrought portion limit lines, as established, are

expected to be sufficient for the majority of the construction and maintenance of the roadway and appurtenances. The statutory process includes:

1. A justification memo to the project file that outlines the results of the layout research and field review.
2. A plan showing the existing topographic features and limits of the proposed reestablishment. The plan includes detail and scale consistent with standard right of way plans. The Property Office Records and Research Unit issues a file number for the plan. The Surveyor/Mapper distributes copies of the plan, together with a transmittal letter to town offices for all affected towns, the registry of deeds (for recording), the applicable county commissioners' office(s) and the MaineDOT Maintenance and Operations Region Office.
3. Signs and notices for the public. A sign at least 18" X 24" (457 mm X 610 mm) in size is prepared in triplicate. Two of the signs are placed along the highway within the limits of the reestablishment and the third is delivered to the town for posting at the town office. The posting period is a minimum of 60 days. The project file must include a memo documenting the date and locations of posting. The Surveyor/Mapper or other Project Team Members periodically check to insure the signs remain posted for the required time.
4. An advertisement in the local or county newspaper with circulation in the project area. The content of the ad resembles the posted signs. The ad must run at least 1 day, including the day that the reestablishment plan is recorded. The Surveyor/Mapper places a copy of the ad in the project files.
5. At the end of the 60-day period, the Surveyor/Mapper contacts the Legal Services Office to determine whether anyone filed an action contesting the reestablishment.

#### **2-6.06(b) Minimum Standard Widths for New Highway Right of Way**

Sections 2-6.04 and 2-6.05 describe the considerations that apply to setting the new right of way limits for a transportation project. In the case of highways, Right of Way Mapping also uses minimum standard widths based on roadway classifications in order to create as consistent a width as practical for the entire length of a project. The standards, shown in Table 2-4, apply to all projects involving roadside improvements beyond the shoulders and to projects with ditching, culvert replacement or drainage system alterations that fall beyond existing right of way limits. The Designer and Appraiser or Senior Property Officer review the potential impacts on abutting properties resulting from the application of these standard widths. Waiver of these standards may be considered provided the project can be constructed, operated and maintained within a less than standard acquisition. Some considerations in waiving the standards are:

1. The existing right of way on the project is 4 rods and of sufficient width to incorporate design clear zones and utility infrastructure as relocated.

2. No more than minor acquisitions or easements are required for the project work.
3. Properties adjacent to the project are on the Historical Register or within a Historical District and will be negatively impacted by a taking.
4. Properties along the corridor are classified as either 4(f) or 6(f).
5. Acquisition of the standard width would be so close to dwellings or other principal structures on a project so as to cause significant severance damage due to proximity.
6. Acquisition would require the replacement of a sub surface sewage disposal system.

Any exceptions to the standards will be discussed with the Project and Program Manager by the Designer and Senior Property Officer. Consultation with the Property Office will take place as necessary.

**TABLE 2-4 — Minimum Widths for Right of Way Acquisition**

Road Classification & Projected AADT	Paved Width	Traveled Way Width	Side Slope	Design Speed	Proposed Minimum R/W Width (one side)	Total R/W Width Minimum
Minor Collectors						
Under 1000	12'/13' (3.0 m/3.9 m)	10' (3.0 m)	1:3	40 mph (60 km/h)	33' (10 m)	66' (20 m)
1000 to 4000	14' (4.2 m)	10'/11' (3.0 m/3.3 m)	1:3	40 mph (60 km/h)	33' (10 m)	66' (20m)
Over 4000	15'/18' (4.5 m/5.4 m)	11'/12' (3.3 m/3.6 m)	1:3	45 mph (70 km/h)	40' (12 m)	80' (24 m)
Major Collectors						
Under 1000	12'/13' (3.0 m/3.9 m)	10' (3.0 m)	1:3	45 mph (70 km/h)	33' (10 m)	66' (20 m)
1000 to 4000	14' (4.2 m)	10'/11' (3.0 m/3.3 m)	1:3	45 mph (70 km/h)	33' (10 m)	66' (20 m)
4000 to 6000	15' (4.5 m)	11' (3.3 m)	1:3	45 mph (70 km/h)	33' (10 m)	66' (20 m)
Over 6000	18' (5.4 m)	12' (3.6 m)	1:3	45 mph (70 km/h)	40' (12 m)	80' (24 m)
Minor Arterials						
Under 1000	14' (4.2 m)	10'/11' (3.0 m/3.3 m)	1:3	45 mph (70 km/h)	33' (10 m)	66' (20 m)
1000 to 6000	14'/15'/18' (4.2 m/4.5 m/5.4 m)	10'/11' (3.0 m/3.3 m)	1:3	45 mph (70 km/h)	33' (10 m)	66' (20 m)
6000 to 8000	18' (5.4 m)	11'/12' (3.3 m/3.6 m)	1:4	55 mph (90 km/h)	40' (12 m)	80' (24 m)
Over 8000	20' (6.0 m)	12' (3.6 m)	1:4	55 mph (90 km/h)	50' (15 m)	100' (30 m)
NHS (Non-interstate)						
35 to 50 mph (50 km/h – 80 km/h)	34' (10.2 m)	12' + 12' (3.6 m + 3.6 m)	1:4	35 mph – 50 mph (50 km/h – 80 km/h)	40' (12 m)	80' (24 m)
≥ 50 mph 4 lane				50+ mph (80+ km/h)	50' (15 m)	100' (30 m)
				55+ mph (90+ km/h)	60' (18 m)	120' (36 m)
Urban						
With Curb					10' to 15' (3 m to 4.5 m) Behind Curb	
No Curb				≤35 mph (≤50 km/h)	24.75' (7.5 m)	49.5' (15 m)
No Curb				>35 (>50 km/h)	33' (10 m)	66' (20 m)

**Notes:**

1. Minimum utility offset to face of pole.
2. Minimum utility offset with pole and mast arm, does not provide aerial clear zone rights beyond R/W limits.
3. Minimum utility offset based on 3-ft (0.9-m) deep ditch with pole 2 ft (0.6 m) behind ditchline, includes pole and mast arm.
4. Truck lanes or additional lane/pavement width will increase minimum offsets by the added width.

### **2-6.06(c) Centerline Tie-ins**

Centerline information is an important tool for the creation of the descriptions used in property acquisition documents. MaineDOT coordinates and controls the highway centerline using survey points. The Survey Unit places at least 2 survey control points on every project. The control points typically are iron rebar driven into the ground or disks mounted in ledge. The goal is to have all projects coordinated in the Maine State Coordinate System.

Whenever practical, new project plans should include tie-ins to the centerlines from previous projects. If the “old” centerline is not tied into by the new project plans, then it is difficult to determine the limits of the existing right of way with the desired degree of certainty. In these cases, new acquisitions are forced to rely on a separate centerline. This fosters confusion when right of way limits and private property boundary interpretations are made in the future.

To help insure that existing baselines are tied into whenever feasible, the Project Team follows these steps:

1. At the initial team meeting, the Surveyor/Mapper provides the plans of any previous projects in the new project area.
2. If the existing plans show centerline coordinates in the State Plane Coordinate System, the Project Team Survey Member will compute the centerline coordinates for the project.
3. If the existing plans have an alignment in the State Plane Coordinate System but no control is located in the new project area, the Project Team evaluates the costs, benefits and feasibility of reestablishing the centerline.
4. If the existing plans show a centerline with assumed coordinates, a tie will be made with any existing monumentation of the project. The Project Team Design Member will do a “best fit” to determine the location of the existing centerline.

If there are no centerline alignments from any previous project, the Survey Team will locate any existing monumentation. The Project Team Design Member will establish an entirely new baseline for the project.

### **2-6.06(d) Alignment Data**

Alignment data is required on right of way plans to permit the proper location of determined boundaries and the layout of the designed roadway. The Project Team Design Member provides the coordinated geometric alignment data to the Surveyor/Mapper or Cadd Technician. The Surveyor/Mapper or Cadd Technician places the stations and coordinates of the construction centerline and the following side road alignment points on the right of way plans:

1. POT - Point of Tangency. The point at which a curve ends.
2. PC - Point of Curvature. The point at which a curve begins.
3. PRC – Point of Reverse Curvature. Point at which curves in the opposite general direction meet.
4. PCC - Point of Compound Curvature. The point at which curves of varying radii and in the same general direction meet.
5. PT – Point of Tangency. The point at which a curve ends.

The Survey Team provides the control traverse (CT) points for the plans.

#### **2-6.06(e) Landmarks, Private Survey Markers and Right of Way Monumentation**

Under the provisions of 14 **MRSA** Section 7554-A, MaineDOT has certain obligations to owners of private property to record the location of and restore boundary landmarks and survey markers. If they are not restored, MaineDOT compensates the landowner for the reasonable cost of restoration by a surveyor. The Surveyor/Mapper works insure landmarks are located and shown on the right of way plans. The Surveyor/Mapper creates an inventory of the survey markers and right of way monumentation in a project area (Form MR-3).

The decision to place right of way monumentation is made on a case-by-case basis. The Department's power to set durable right of way monumentation at the angles of highways arises from 23 **MRSA** Section 653. Surveyor/Mappers and others use the monumentation to reestablish right of way limits when subsequent projects or other activities occur in the area. When used, right of way control is established and monumentation is placed at the conclusion of construction. This is the responsibility of the Project Manager, in cooperation Surveyor/Mapper. If monumentation is placed on a project, the Surveyor/Mapper places information on the monumentation and tie-ins on the final right of way plans.

#### **2-6.06(f) Right of Way Plan Quality Review Process**

Chapter 10 and Section 2-1.05 cover general quality assurance/quality control policies and practices for Right of Way personnel. The Title Office Condemnation Unit and the Surveyor/Mapper each play a role in quality assurance/quality control for right of way plans. The Title Office Condemnation Unit provides support services and quality reviews for all right of way mapping activities. Its staff helps Surveyor/Mappers resolve mapping issues and insures that plans meet MaineDOT Right of Way standards. The Property Office, with input from its various units sets mapping standards and procedures and also establishes and maintains the protocols for the use of CADD systems to prepare right of way plans. This Office also performs formal reviews of right of way plans at the end of the preliminary plan stage and at the end of the final plan stage.

The Project Manager is responsible for coordinating with Project Team Members throughout the project and for insuring that right of way plans reflect design changes whenever these changes occur. The Surveyor/Mapper provides updated plans to those who need right of way plans to perform their tasks, including the Senior Property Officer, Utilities Team Member, and the Title Office. This coordination and update process enables the Project Team to rely on the right of way plans for current, accurate information about the project.



## 2-7 OTHER MAPPING AND RESEARCH FUNCTIONS

### 2-7.01 Encroachments

The provisions of 23 MRS Section 1401-A regulate installations on or near the public right of way. Section 1401-A defines the prohibited actions, but also permits the MaineDOT Commissioner to waive the provisions of the statute in certain circumstances. Property owners may apply to the Commissioner for a grant of limited waiver allowing an installation along a state or state-aid highway within a municipality if a) the Commissioner receives a written statement from the municipal officers requesting or supporting such limited waiver; b) the posted speed limit where the installation will occur is no more than 35 miles per hour; and c) the Commissioner determines that highway safety will not be adversely affected by the installation. Upon receipt of a request for a limited waiver, the Commissioner refers the request to the Department's Right of Way Waiver Committee for a determination of whether the limited waiver should be granted.

The installation of private utility installations within the right of way is addressed in MaineDOT's Utility Accommodation Policy under the Private Facilities section 4-6.

Many encroachment issues are referred to local municipalities pursuant to their maintenance obligations under 23 **MRSA** Section 754 or their sign removal obligations under 23 **MRSA** 1914(9). The Right of Way Control Office of the Bureau of Maintenance and Operations handles all MaineDOT enforcement cases, including the enforcement of Section 1401 for State and State-aid highways.

In cases where an existing encroachment may satisfy the occupation standards of 23 **MRSA** Section 2952, or qualify for other exemption from removal, the matter goes to the Title Office Condemnation Unit for review. Working with the Property Office Records and Research Unit, Mapping determines the location and history of the encroachment and evaluates the present and potential future impacts of the encroachment. If the Title Office Condemnation Unit determines that MaineDOT will not require removal of the encroachment, it works with the property owner to develop terms and conditions that will govern the encroachment. The Title Office Condemnation Unit and the Legal Services Office then issues a Letter of No Objection containing the terms and conditions. These letters include a reservation of the right by MaineDOT to require the future removal of the encroachment upon notice to the property owner.

### 2-7.02 Review of Developer Projects

Private and public developers often propose projects that require changes in existing traffic patterns on adjacent or nearby highways under MaineDOT jurisdiction. These projects include, but are not limited to, projects that require a traffic movement permit under 23 **MRSA** Section 704-A or the **Site Location of Development Act**, Title 38, Chapter 3, Subchapter I, Article 6.

The Developer Project Coordinator in Traffic Engineering handles all developer project reviews and contacts. The developer submits design plans and a traffic study to MaineDOT, showing the projected traffic flow and/or turning movements. Developer plans must include the existing

right of way lines for each affected roadway, the roadway baselines as established in previous MaineDOT projects and the MaineDOT map file number of relevant MaineDOT right of way plans. MaineDOT reviews the plans to determine whether the project meets applicable requirements and can be accommodated by the highway system. The Title Office Condemnation Unit determines whether additional right of way is required for the project. If a project is approved, MaineDOT may impose operations or design requirements on the project as a condition to the approval.

The role of the Title Office Condemnation Unit in developer project reviews includes the following:

1. Provide the developer with copies of any existing right of way plans for the project area.
2. Determine the accuracy of the plotted existing right of way.
3. Identify all additional right of way required for construction, maintenance and operation of the proposed new highway design.
4. Notify the Developer Project Coordinator in Traffic Engineering of the results of the mapping review.
5. Provide the developer with sample acquisition documents for the rights required for the project.
6. Review any revised or supplemental developer plans for compliance with required changes.
7. Review proposed acquisition documents prepared by the developer prior to execution.
8. Assign a developer plan file number to the final plan recorded by the developer.
9. File reproducible copies of all project plans and acquisition documents, as provided by the developer.

In some cases, the Title Office Condemnation Unit and the Developer Project Coordinator may determine that the developer does not need to prepare a full right of way plan. In these instances, which typically involve only easements, the Title Office Condemnation Unit adds the location and recording information for the developer project easements to the most recent existing MaineDOT right of way plan for the project area.

Developers are responsible for acquiring any needed right of way. Permanent rights necessary to accommodate the new facility must be transferred to MaineDOT. The developer is not required to transfer to MaineDOT any of the temporary rights needed for construction, including

grading rights. The developer also is responsible for delivering reproducible copies of plans and acquisition documents to MaineDOT once the approval and acquisition processes are complete.

### **2-7.03 Non-Project Agreements with Property Owners**

MaineDOT often enters into agreements with individual property owners that permit the owners to perform activities on their property that may affect the Department's facilities or right of way. Examples include drainage alterations, topographic modifications and landscaping. These agreements are used whenever MaineDOT agrees to permit any permanent improvement or activity to occur that affects land or facilities within the limits of the right of way.

Because these agreements often affect multiple aspects of MaineDOT's activities, the negotiation process typically involves representatives from several MaineDOT units, including the Bureau of Maintenance and Operations, the Title Office and the Office of Legal Services. Once the parties agree on the terms and conditions for the agreement, the Title Office Condemnation Unit prepares the agreement, handles its execution, records it, provides a copy to the Bureau of Maintenance and Operations and enters notations referencing the agreement on the current right of way plan for the affected area. A Property Owner Agreement specifies:

1. Description of the parties to the agreement;
2. Reasons the agreement is needed;
3. Detailed specification of the construction or other work to be performed by the owner;
4. Description of the rights, normally a license, MaineDOT gives the owner to enter MaineDOT property and perform work;
5. Description of any rights the owner conveys to MaineDOT to permit it to inspect and maintain the owner's improvements as MaineDOT deems necessary; and
6. Specification of the property owner's obligations for maintenance, compliance with laws and indemnification of the State of Maine.

Typically, the Maintenance and Operations Region Manager or Region Engineer acts as the MaineDOT signatory for these agreements.

### **2-7.04 Section 815 List**

The Property Office administers the list of properties that are subject to the right of first refusal provisions of 1 **MRSA** Section 815. Section 7-5.02 describes the criteria for property included in the Section 815 List. The Section 815 responsibilities of the Property Office are:

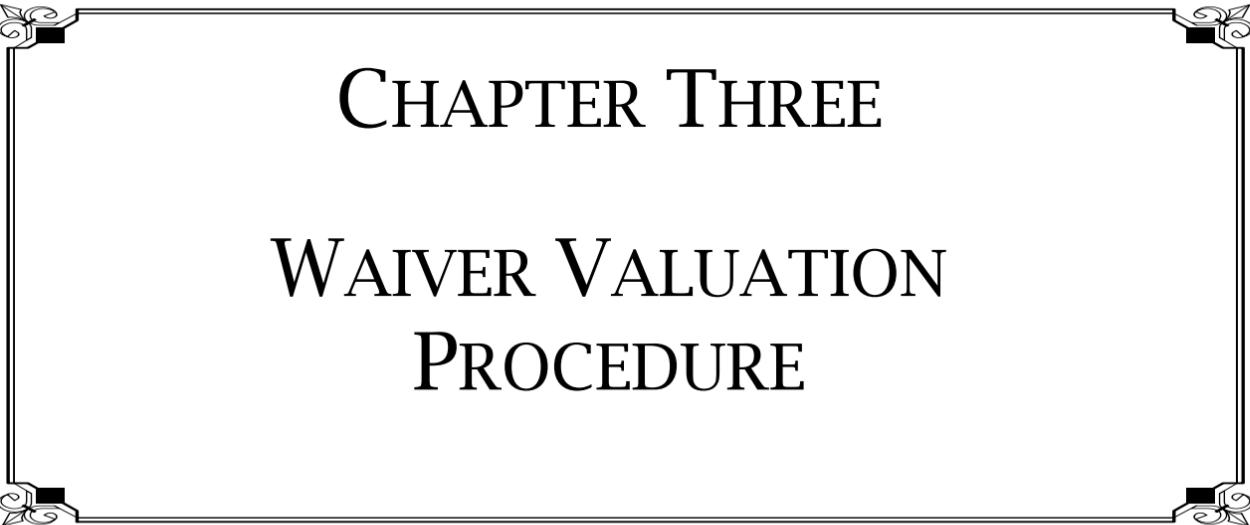
1. Establish a Section 815 control date for each parcel involving acquisition of non-exempt property after October 21, 2001. The control date is 8 years after the vesting in MaineDOT of title to the first property acquired for the project.
2. Maintain communication with the acquiring Bureau or Division to insure the property is removed from the list when it is used for the purpose for which it was acquired.
3. Coordinate with the Property Manager as necessary to manage or dispose of these properties.

#### **2-7.05 Agreements with Municipalities**

When MaineDOT no longer requires property for its own transportation facilities, it may decide to allow the use of the land to a municipality for continued use for transportation purposes, (e.g., parking, trails, service roads.). These are known as relinquishments. In these cases, the Title Office prepares an agreement. The Title Office Condemnation Unit adds the agreement to the original acquisition document in its Deed File and notes it on MaineDOT's right of way plans. See Chapter 7.7.06 for a detailed discussion of relinquishments.

#### **2-7.06 Baseline Descriptions for Highway Designations**

Whenever MaineDOT completes a highway project involving a change in the location of the highway as described in 23 **MRSA** Section 62, or when the classification of a highway under 23 **MRSA** Section 53 is changed, MaineDOT must document the changes and the Commissioner of Transportation must approve the new designations. The Title Office Condemnation Unit prepares the Commissioner's Item, including the new description, for submission to the Commissioner's Office. Once the Commissioner approves the change, the new designation is added to the records for the highway in question.



CHAPTER THREE

WAIVER VALUATION  
PROCEDURE

MAINE RIGHT OF WAY MANUAL

*December 2010*

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# CHAPTER THREE

## WAIVER VALUATION PROCEDURE

### 3-1 PURPOSE AND USE

#### 3-1.01 Objectives of the Waiver Valuation Procedure

The Waiver Valuation process is defined as “the valuation process used and the product produced when the Department determines that an appraisal is not required.” It is a combined valuation and acquisition process designed to efficiently acquire relatively low-value uncomplicated acquisitions where there is no severance damage except minor cost to cure items and adequate comparable sales are available. Maine Law provides the Department the authority to prescribe procedures to waive the appraisal in cases where the fair market value is less than \$15,000. Federal Regulations, effective 2/3/2005 provide for waivers of appraisals where the valuation challenge is uncomplicated and the value is anticipated to be less than \$10,000. Provisions allow for an increase to \$25,000 with Federal approval, provided the property owner is offered the option for an appraisal. The process insures full consideration of property owner rights while promoting timely delivery of right of way for project construction. Most of the acquisitions in the MaineDOT right of way process come under the criteria for Waiver Valuation, and the process thus has an important role in streamlining right of way acquisition.

Waiver Valuation is an optional procedure supplementing the previous functions of the Value Finding and Short Form Appraisal Format for acquisitions that are **simple and non-complex and adequate market data exists to support valuation estimates**. It also incorporates the minimum payment amount provided under separate procedures.

The Waiver Valuation Procedure allows for the same person to value the property and to negotiate settlement for parcels only if the offer is less than \$10,000. (49 CFR 24.102(n)(3). Federal conflict-of-interest restrictions previously prevented this dual role. The “single agent” concept allows for the delegation of a higher level of authority and responsibility to project-level right of way staff. Property owners are in direct contact with the person who valued the acquisition, and who is in the best position to respond to questions and concerns.

The Waiver Valuation Procedure is authorized by 23 **MRSA** Section 153 B2 as a negotiated acquisition alternative. It is also authorized in the Federal regulations under the waiver provisions of 49 **CFR** Section 24.102(c) (2).

The Waiver Valuation Procedure offers the following benefits:

1. Administratively simple to implement;
2. Cost savings to the state in fewer appraisals;
3. More effective use of professional right of way staff;

4. Property owners better understand the simplified valuation process;
5. Right of way delivery time is reduced; and
6. One agent may perform valuation and acquisition (single agent concept).

The Waiver Valuation Procedure is not a means to reduce the amount of compensation that is paid for acquired property. The intent is to compensate property owners the same amount they would receive under the appraisal acquisition process. The Waiver Valuation procedure allows MaineDOT to achieve that objective more efficiently.

The procedure is primarily intended for projects on which the impact to abutting properties is minimal and the proposed acquisition and construction generate no changes in the use or utility of affected properties.

### **3-1.02 Application**

The Waiver Valuation Procedure will be used only under the conditions set forth below:

1. It is an uncomplicated acquisition where damages can be calculated using a unit value supported by adequate comparable sales.
2. There are no damages to the remainder except minor cost-to-cure items.
3. Damages are expected to be \$ 15,000 or less.
4. Sufficient comparable sales data are readily available.
5. In cases where the damages are anticipated to be above \$10,000 the owner will be offered the opportunity to have the property appraised.

The Waiver Valuation Procedure will not involve complex valuation problems or situations where there may be severance damages to the remaining property. It is also not appropriate for use when the highest and best use of the land is subject to question or change, when any severance damage cannot be mitigated by a minor cost to cure, where land values are not easily determined, and when the valuation problem is too complex for the format.

#### **Example: Waiver Valuation Procedure Is Applicable**

Acquisition is 200 ft<sup>2</sup> from the front of a residential property. House setback is 75 ft) from the existing road; therefore, there is no severance damage. Owner must replace a 20 ft hedge that is in the acquisition area.

#### **Example: Waiver Valuation is not applicable**

House setback in example above is 25 ft (7.6 m) instead of 75 ft (23 m). This raises the possibility of severance damage. The Waiver Valuation Procedure should not be used. A format that will allow for a narrative discussion of the severance issue would be more appropriate.

**3-1.03 Qualifications required for individuals performing Waiver Valuations.**

The intent of the Federal Regulation is that non-appraisers be enabled to make waiver valuations where the acquisitions are low value and non-complex, freeing appraisers to do more sophisticated work. The determination that the proposed acquisition is low value and uncomplicated and the decision to use the Waiver Valuation process should be made and documented by the Senior Property Officer.

An employee who completes waiver valuations should at minimum have:

- Successfully completed the FHWA sponsored internet course: Real Estate Acquisition under the Uniform Act, An Overview.
- Completed at least 30 hours of classroom training in Basic Appraisal Principles.
- Have demonstrated ability to interpret right of way maps, design plans and cross sections and clearly explain the plans to property owners and members of the public.
- Have demonstrated an understanding of the concept of severance damage and its causes.
- Have demonstrated an understanding of the concept of contributory value and the ability to accurately value property improvements.
- Demonstrate an understanding of the difference between real estate, fixtures and personal property.
- Demonstrate adequate experience to identify and solve the valuation challenge, or have sufficient direct oversight from a competent staff member.

**3-1.04 Process Overview**

Waiver valuations are not appraisals as defined by the Uniform Act or Federal Regulations therefore, appraisal performance requirements or standards regardless of their source are not required for waiver valuations. Since waivers are not appraisals, neither is there a requirement for appraisal review. However, a reasonable basis for the waiver valuation must be established and the amount of Just Compensation must still be established by the Director of the Property Office.

The individual preparing the waiver documentation will field inspect all the properties on a project and review project proposals, consider comparable market sales data available in office files and through multiple listing services; and consider improvements impacted by the taking.

The Waiver Valuation process has 3 levels, each requiring varying degrees of documentation. Each level is explained as follows:

**3-1.04(a) Donation.**

Occasionally, property owners will elect to donate land to the State and release the Department from its obligation to pay just compensation. In this case, neither an appraisal nor a waiver is necessary, provided the owner acknowledges in writing they understand their rights to an

appraisal and just compensation and they release the acquiring agency from its obligation to provide an appraisal by signing Form. VL-23.

### **3-1.04(b) Minimum Payments**

The Waiver Valuation Procedure incorporates minimum compensation amounts that are applied in appraisal-based negotiations. Owners will be offered a minimum amount of \$500 for fee simple and for permanent easement acquisitions. A minimum amount of \$250 will be paid for temporary rights. Grading rights acquired to benefit the property by grading a drive, lawn or replacing a stairway do not typically require a payment to the owner as they are temporary and do not negatively impact fair market value.

The preparer will complete form VL-22, listing the parcels and items eligible for a minimum payment, the nature and size of the taking and the amount of the payment and referencing sales data considered. The memo will be initialed by the preparer and forwarded to the Senior Property Officer for approval and the Director of the Property Office for a determination of Just Compensation prior to authorization to negotiate.

### **3-1.04(c) Waiver valuations where the proposed acquisition is estimated at \$15,000 or less.**

In cases where the values are determined to be \$15,000.00 or less, the expedited waiver process is recommended. This process is outlined as follows:

1. The local real estate market should be surveyed for comparable sales data. This search can include in-house files, Multiple Listing Services, Brokerage houses town records or other sources.
2. Basic sales information, to include size, highest and best use, selling price, date of sale, and indicated unit value will be arrayed in a spreadsheet format, sorted on sale size.
3. The array will be reviewed to determine indicated values of various size lots. These indicated values will be used to bracket values applied to subject parcels. For example, if the indicated values of typical house lots in the array range from \$1.00 to \$2.00 per square foot, payments for taking from house lots will be concluded within that range.
4. Each parcel will be inspected, photographed and any improvements within the taking area will be noted.
5. The waiver preparer will complete a spread sheet itemizing the land and rights in land taken, allocating for each interest, plus an allocation for the improvements. The spreadsheet template will total the damages and round up in \$100.00 increments.

### **3-1.04(d) Identification of Parcels**

At an early stage in the project, usually at PDR, (Preliminary Design Report), the Senior Property Officer and Team Members will identify completed properties on the project that fit the criteria for the Waiver Valuation. They will review the list of candidate parcels and consult with the **Project Manager** to establish milestone dates for the process through right of way certification. The Senior Property Officer and Project Manager need to be mindful of scheduling requirements and note that unsettled waivers will require appraisals prior to condemnation, which may have an impact on delivery milestones.

**3-1.04(e) Preparation of Waiver Valuation Worksheet**

The Senior Property Officer will assign the preparation of the Waiver Valuation Worksheet (Form VL-4) to a qualified team member, or another qualified individual. The Worksheet is prepared from information in the preliminary sales study and project data file information. When completed, the Senior Property Officer will insure the form contains all the necessary data and calculations and approve the waiver based offers forwarding the approvals to the Property Office Director for a Just Compensation determination.

**3-1.04(f) Negotiations**

The Senior Property Officer, after confirming NEPA COMPLETE, will assign responsibility for negotiating the parcel to the person who completed the Worksheet, or to another qualified person. The Negotiator prepares for negotiations in the same manner and extent as would be appropriate if the acquisition were based on an appraisal. The Negotiator meets with the owner and presents the Waiver Valuation Offer Settlement Package in the same manner as with other acquisitions. The property owner is informed of how the compensation was established and that an Appraisal Report was not prepared. The Negotiator informs the property owner that if the Department and the owner do not reach an agreement about the value of property acquired, or if the owner requests, the Department will perform an appraisal.

An owner accepting the offer signs the Waiver Valuation Offer Letter and Settlement Agreement. The balance of the owner contact and acquisition is like any other acquisition of right of way.

If the offer is refused with no possibility of further negotiation, the Senior Property Officer will direct that an appraisal be prepared, reviewed, negotiated and the parcel condemned similar to typical appraisal acquisitions.

**3-1.05 Responsibility**

An appropriate level of knowledge and responsibility is required for effective use of the Waiver Valuation Procedure. The value estimate is not subject to a formal review before an offer is made to owners, but still requires a Just Compensation determination. The Negotiator has broad latitude in responding to owner requests and concerns. The Negotiator must fully and accurately describe the process so the owner's decision to accept the offer is freely made based on full information and disclosure. The assignment of Waiver Valuation will be made to staff that have sufficient knowledge and experience in the right of way acquisition process.

**3-1.06 Quality Assurance**

Assuring the quality of right of way acquisition is a shared responsibility of every person who is involved in the process. Personnel assigned responsibility for Waiver Valuation will actively examine the process as outlined in Chapter 10 to assure that it is fulfilling its goals as expressed in this Chapter and to identify opportunities for improvement. Also see Chapter 10.

The person assigned waiver valuation acquisition responsibility in consultation with the Senior Property Officer, will determine quality assurance actions that will be performed. The following items are examples of specific quality assurance activities that may be undertaken:

1. Conduct follow-up phone interviews with owners after construction is complete.
2. Identify training opportunities that would expand knowledge and skill in right of way acquisition.
3. Suggest refinement in acquisition practices that will make the process more efficient and effective.
4. Participate in informal workshops to exchange experiences and practices with other professionals involved in waiver valuation acquisitions.
5. Perform spot checks of closed files to identify successful and unsuccessful practices.
6. Conduct a letter survey of owners after acquisition.

The Property Office will assign quality assurance activities for the Waiver Valuation function as part of the annual Quality Plan. See Chapter 10.

### **3-2 WAIVER VALUATION WORKSHEET (Form VL-4)**

The Senior Property Officer will assign preparation of the Waiver Valuation Worksheet to a person who meets the qualifications outlined in Section 3-1.03. This may be the Right of Way Operations Team Member on the project, or another person, depending on how the project is organized and staffed. The person who is assigned responsibility will be guided by the instructions following in this section. A copy of the Waiver Spreadsheet is found at the end of this Section.

#### **3-2.01 Data Assembly**

The qualified person assigned responsibility will obtain the necessary data in preparation for completing the Waiver Valuation Worksheet. The data assembly for the worksheets will draw from, as well as contribute to, the cumulative Project Data Package that supports all valuation activities on the project as discussed in Section 4-4. Data assembly will include the following:

1. Obtain and include a current dated set of preliminary project plans in the Project Data Package. The plans are a permanent record documenting the proposed design and construction features that will be considered in preparing the Waiver Valuation Worksheet.
2. Inspect the project and become familiar with the engineering features of the design.
3. View each parcel to determine the effects of the acquisition and the construction as proposed. Take record images (either photos or video) of the acquisition areas, easement areas and improvements to be acquired.
4. It is not necessary to contact the owner at this time to give them the opportunity to accompany during the inspection of the property. However, if time permits contact with the owner to explain the reasons for the inspection and the following process is beneficial to owner acceptance.
5. Assemble sufficient comparable land sales for the various types of parcels within the project. Referencing sales data in other projects is permissible. Inspection of all sales at this time is not necessary, The sales do not need to be confirmed if they are used exclusively on parcels where the Senior Property Officer has determined to use the Waiver Worksheet.
6. Consider relevant portions of flood hazard maps.

#### **3-2.02 Preparation of the Worksheet**

The Senior Property Officer, or other assigned staff, will prepare the Waiver Worksheet using the information that has been accumulated in the Project Data Package. The following steps will be followed:

1. Estimated damages on waiver eligible parcels will be calculated using a Microsoft Excel template that contains preformatted rows and columns. Each parcel on the

spreadsheet has a three row format. Inputs in the first row contain data itemizing the size of the interests and the nature of the improvements taken, , Inputs in the second row contain the owner's name, and concluded values. The spreadsheet calculates and summarizes damages based on the inputs for areas taken and unit values. The third row contains the damage conclusion.

2. Complete appropriate line items using information from the Project Data Package. General reference to the list of sales used to estimate unit values is sufficient at this point in the process.
3. Provide or reference documentation for cost-to-cure items.
4. If it is discovered after assignment that severance damages or complex valuation issues exist, or if compensation will likely exceed \$15,000, the parcel will be appraised.
5. The scope of comparable data research and value analysis should be sufficient to estimate a unit value that reflects the current market. Data research may extend beyond the town in which the project is located if necessary to gather sufficient sales.
6. Sign and date the record copy of the Worksheet, after making a final review to insure that all necessary data have been included and the calculations support the value conclusion.

### **3-2.03 Approval of the Worksheet**

The Senior Property Officer will approve by initialing the record copy of the completed Waiver Worksheet, insuring that the form contains all necessary data and calculations. The determination of Just Compensation will serve as authorization to the Property Office Team Member to initiate negotiations with the property owner, guided by provisions in Section 3-3.

The Worksheet is not subject to MaineDOT's appraisal review process. The assigned preparer is responsible to insure that the estimate represents Fair Market Value and that the factual data and calculations are correct.

### **3-2.04 Just Compensation Updates or Revisions**

Updates or revisions to the determination of Just Compensation would occur in situations similar to those that are experienced in the acquisition of full appraisal parcels, including the following:

1. The property owner may have information that may require a reanalysis based on the property characteristics or condition.

2. As project design proceeds, there may be changes that would alter the impact on the remaining property.
3. The project may be delayed, thereby causing the data used to be outdated and a more current estimate to be warranted.

In any of these situations, the individual responsible for the initial valuation will complete and sign a new Waiver Worksheet. Any new or revised and dated plan sheets will be incorporated into the Project Data Package, and any new photos will be filed with the Worksheet.

If the updated Worksheet reflects a change in value, it should be transmitted to the Senior Property Officer for approval and the Director of the Property Office for an update of the Just Compensation determination.

<u>Parcel</u> <u>/Item</u>	<u>Map</u> <u>Lot</u>	<u>Name</u>	<u>Land Taken in Fee</u> <u>Total Area</u>	<u>Roadway</u>	<u>Drainage Easement</u> <u>No.</u>	<u>Slope Easement</u> <u>No.</u>	<u>Rights</u> <u>SF Size</u>	<u>Const</u> <u>No.</u>	<u>Maint</u> <u>No.</u>	<u>Site</u> <u>Improvements</u>	<u>Building</u> <u>Removal</u>	<u>Remaining</u> <u>Area</u>	<u>Total</u> <u>Compensation</u>
1		Cory J. Campbell	100 Ac.		1	620	1	2645				100 Ac	
Waiver			Compensation:			\$250.00		\$0.00		\$0.00			\$250.00
2		Larry E. Stanley & Carmen M. Stanley	8.12 Ac.		1	5220	1	2650				8.00 Ac	
Waiver			Compensation:	\$0.05	\$261.00	\$150.00		\$0.00		\$1,300.00			\$1,711.00
													\$1,750.00
3		Stephanie J. Cartwright	5.06 Ac.			14460	2	1335				4.73 Ac	
Waiver			Compensation:	\$0.05	\$723.00			\$0.00		\$3,000.00			\$3,723.00
													\$3,750.00
4		Lurene C. Houston	7.13 Ac.		1	4500	2	1300				7.03 Ac	
Waiver			Compensation:	\$0.05	\$225.00	\$150.00		\$0.00		\$2,000.00			\$2,375.00
													\$2,400.00
5		James W. & Mary S. Lightbody	1.82 Ac.		1	4495	1	140				1.72 Ac	
Waiver			Compensation:	\$0.25	\$1,123.75	\$150.00		\$0.00		\$2,500.00			\$3,773.75
													\$3,800.00

VL-4





### 3-3 ACQUISITION PROCESS

#### 3-3.01 Contact with Property Owner — Guidelines

The Senior Property Officer will authorize an offer based on the Waiver Worksheet.

The negotiations process is as described in Chapter 5. The Negotiator should contact the owner and arrange a meeting to discuss the acquisition and present the compensation offer. The meeting should be preferably at the acquisition site or another location if it is mutually arranged.

The quality of preparation for the meeting is critical to its success. The Negotiator should review all documents and the project plans even if the Negotiator has prepared the Waiver Valuation Worksheet.

The Negotiator will provide a copy of the MaineDOT booklet, ***A Land Owner's Guide to the Property Acquisition Process***, at the initial meeting.

#### 3-3.02 Offer and Negotiations

On projects that involve Federal participation and concurrence, the Senior Property Officer and the Negotiator must confirm that the necessary **NEPA** process is complete. Prior to making the initial offer, the record should show that a Categorical Exclusion (CE), Finding of No Significant Impact (FONSI) or Record of Decision (ROD) document has been submitted and approved. For more information, see 23 CFR part 771.

The Negotiator will prepare a Waiver Valuation Offer Letter and Assent Form t (Form AQ-8) as part of pre-negotiations preparation. A copy of this form is included at the end of this Section.

At the first contact, the Negotiator will explain the acquisition along with the proposed construction and its effect on the property, and the property rights that MaineDOT is acquiring. The owner will be advised orally and in writing how the compensation was established and that an actual appraisal was not made. The owner will be further informed that if the Department and owner do not reach a mutually agreeable settlement for the value based on the acquisition amount presented, or at the owner's request, an appraisal will be made to determine the fair market value of the property or interest in property to be acquired.

The Negotiator will discuss any improvements that will be affected by the acquisition. The Offer Letter and Settlement Agreement will be provided and explained in sufficient detail to insure that the owner is fully aware of the acquisition and the impact on the remaining property. The owner should be encouraged to accept the offer and sign the Settlement Agreement.

If the owner does not initially accept the offer, other avenues to agreement will be explored. If the owner makes a counteroffer, the Negotiator should neither accept nor reject it, but ask the owner for any factual information supporting the counteroffer. Further discussion with the owner may disclose a basis for an administrative settlement. If the Negotiator has been pre-authorized, an offer to settle administratively may then be made. If accepted, the Negotiator will

provide a memorandum for the file explaining that the increased amount was necessary to expedite settlement, and was otherwise reasonable and in the public interest.

The intent is to encourage and expedite the acquisition of real property by agreement with owners realizing the inexact nature of the valuation process. Also, the Negotiator is endeavoring to minimize administrative costs of property acquisition, and avoid potential litigation.

### **3-3.03 Settlement Agreement**

The Settlement Agreement prepared by the Negotiator contains the same basic information that is contained in the Waiver Valuation Worksheet. The Negotiator should review the Agreement with the owner point by point to insure complete understanding.

### **3-3.04 Refused Offer**

If the Negotiator is unable to reach a reasonable settlement with the property owner based on the waiver valuation, or if the property owner requests an appraisal, the Negotiator will immediately return the parcel to the Senior Property Officer with a contact report setting forth the reasons a settlement cannot be reached and the Negotiator's recommendations for appropriate actions.

The Senior Property Officer may, if judged appropriate, authorize a maximum offer to settle administratively to be presented by a Negotiator in the normal manner. A higher offer may reflect potential appraisal and review costs, litigation cost avoidance, as well as the inexact nature of property valuation. The Senior Property Officer will prepare a written justification providing information supporting the increased offer. If a settlement is not possible, the Senior Property Officer will then order an appraisal of the acquisition.

If an appraisal is necessary, all sales used in the Appraisal Report will be confirmed, including those sales that had been used in the Waiver Valuation Procedure. It is important that the Negotiator's contact sheets clearly indicate owner's questions and concerns, and the reason why settlement could not be reached.

**WAIVER VALUATION OFFER LETTER  
AND SETTLEMENT AGREEMENT**

<b>Project No.:</b>	<b>PIN:</b>	<b>Municipality:</b>
<b>Parcel/Item No.:</b>	<b>Owner:</b>	

The Maine Department of Transportation wishes to inform you of a planned transportation project in \_\_\_\_\_ Maine.

A portion of your land and/or rights in your land is necessary as additional right-of-way for this project. The Right-of-Way Plan accompanying this agreement shows the land and/or rights to be acquired from you for this project. The right-of-way to be acquired from you for this project is as follows:

Land in Fee:	Highest & Best Use:
Easement(s):	
Temporary Construction Easement(s):	
Grading Rights:	Fair Market Value:
Significant Improvements:	Offering Price:
Other Interests and/or Rights to be acquired:	

\_\_\_\_\_, the Department's representative, has provided you with a copy of the booklet, *"State of Maine Department of Transportation-A Landowner's Guide to the Property Acquisition Process,"* which explains the process that must be followed to acquire right-of-way. The representative has attempted to answer your questions and agreed to respond to any questions that cannot be immediately answered.

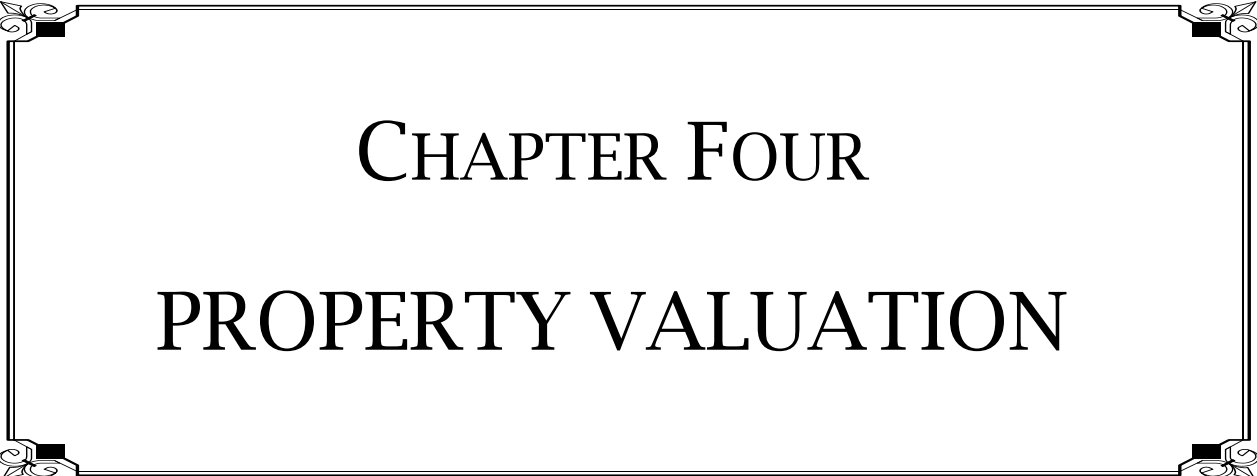
\_\_\_\_\_, the Department's representative, has explained:

- ✓ The proposed acquisition and all construction features proposed, including changes of location, grade, drainage and slopes, and the effects on your property;
- ✓ The method of determining just compensation is not based on an appraisal, but an alternative procedure using land prices in the project area. If we do not reach an agreement about the value of your property to be acquired, or if you request, the Department will perform an appraisal for the proposed acquisition.

**I/We, the undersigned property owner(s) and the Department agree to the following:**

1. This agreement is being executed voluntarily;
2. The Department will acquire the necessary real property shown on the accompanying Right-of-Way Map, by deed or by filing a "Notice of Layout and Taking" on or before \_\_\_\_\_;
3. The Department will pay the property owner(s) (includes all record parties of interest), and the property owner(s) will accept, the total amount of **\$00.00** at the time of acquisition, as just compensation and full payment for the real property to be acquired;
4. The Department may terminate this agreement if the project no longer requires the acquisition of the real property shown on the Right of Way Map;
5. Project changes after the date of this agreement, which adversely impact this parcel, may void this settlement, at the option of the property owner(s). All payments made to the property owner(s) will be treated as a credit against the final amount determined to be just compensation.

Owner's Signature: ✓	Date
Owner's Signature: ✓	Date
Accepted for MaineDOT By:	Date



# CHAPTER FOUR

## PROPERTY VALUATION

MAINE RIGHT-OF-WAY MANUAL

*December 2010*

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# CHAPTER FOUR

## PROPERTY VALUATION

### 4-1 SCOPE, ORGANIZATION AND MANAGEMENT

#### 4-1.01 Purpose and Need for the Valuation Function

The Maine Constitution, Article 1 Section 21, states: “Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.” Additionally, the Fifth Amendment to the United States Constitution reads, in part, “No person shall...be deprived of...property without due process of law; nor shall private property be taken for public use without just compensation.” The valuation process is the means by which MaineDOT assures compliance with the constitutional right to just compensation.

Valuation requirements are further codified in the ***Maine Revised Statutes***, including, “When property is to be purchased or taken over and held for the State, the department shall first cause the property or interest in the property to be acquired, to be appraised by one or more appraisers.” The same statute goes on to modify this requirement by stating, “The department may prescribe a procedure to waive the appraisal in cases involving the sale or donation of property. The department may prescribe procedures to waive the appraisal in cases in which the fair market value is estimated at \$15,000 or less and valuation can be established by another method. In any case in which the department and the owner do not reach an agreement about the value of property or the interest in property to be acquired, or if the owner requests, the department shall perform an appraisal” (23 ***MRSA*** 153-B, 2).

Where federal funds are used in any phase of a project, valuation and appraisal review activities must be in accordance with 49 ***CFR*** Part 24.

Both the U.S and Maine Constitutions require that when private property is taken for public use, property owners are entitled to receive Just Compensation. Because of the sovereign government’s power of eminent domain, the payment of just compensation is required whether the property is condemned or acquired by deed.

The measurement of Just Compensation is typically held to be the fair market value of the real estate acquired. In the case of a partial taking Just Compensation is the difference in the fair market value of the impacted property immediately before and immediately after the taking, taking into account the contributory value of the part taken as improved, any severance damage, or loss in value to the remainder, and/or any special benefits, or increases in value to the remainder. In the case of a total taking, Just Compensation is typically held to be the fair market value of the entire property. In theory, the value of the real estate remaining after taking plus just compensation is equivalent to the value of the real estate before the taking.

The Director of the Property Office is charged with the responsibility of determining Just Compensation. That determination is typically based on the value derived by the Department’s

waiver valuation process or the Department's approved appraisal. The process which governs the development of the approved appraisal is the subject of this chapter. Because there is no parity between bargaining positions between the State and the Property Owner, the State is obligated by law to offer no less than the approved appraisal as its determination of Just Compensation.

#### **4-1.02 Special Benefits**

Maine, law (**MRSA** 23.1542F), requires that special benefits be set off against severance damages but not against the value of the property acquired. Special benefits occur when the property remaining after a partial acquisition is enhanced by reason of the public improvement in a way that is not shared by other property affected by the project. An example would be an acquisition from a single ownership for an Interstate highway interchange. The project location is totally within one farm ownership. Three of four remainders are at interchange ramp quadrants and are converted from a highest and best use as farmland to motel and restaurant locations. The enhancement value would be set off against damages occurring to a fourth remainder. However, the property owner would be paid the full value of the land acquired for the interchange.

#### **4-1.03 Role of the Property Valuation Function**

MaineDOT carries out its obligation to pay just compensation by establishing the fair market value of every property to be acquired for transportation projects. The fair market value constitutes MaineDOT's estimate of just compensation and is the basis of all offers and payments to owners pursuant to the exercise of its eminent domain authority. The valuation process that MaineDOT uses to establish fair market value fulfills both Constitutional and Statutory obligations. In its quality and thoroughness, MaineDOT's valuation process also demonstrates fair and equitable treatment for Maine citizens who are required to relinquish property for transportation projects that benefit the general public.

MaineDOT's valuation process consists of several formats and levels of documentation that correspond to the type of property being acquired and the complexity of the acquisition. The multi-format structure, along with the process of Appraisal review, insures that the fair market value offer to each property owner is fully supported by market information and analysis that is relevant to the property and the effect of the acquisition. The process also insures that property acquisition is expeditious and that the cost of administering the program is reasonable.

The following valuation formats are used to establish value:

1. Waiver Valuation Procedure,
2. Value Finding Format
3. Short Format Appraisal, and
4. Detailed Narrative Report.

The Waiver Valuation Procedure is the subject of Chapter 3 of this *Manual*. The Detailed Narrative Appraisal, the Short Form Format Appraisal and the Value Finding Format are discussed in Section 4-2.

Appraisal review is a critical component in the process of establishing fair market value. Every property appraisal is reviewed for factual accuracy, adequacy of documentation, and support for judgment by a qualified Review Appraiser. The Review Appraiser has responsibility for determining fair market value from all value information submitted approving the appraisal, and making a recommendation to the Director of the Property Office to serve as a basis for the Just Compensation determination. The Review Appraiser function is discussed in Section 4-5.

#### **4-1.04 Types of Property Valuation Services**

As discussed above, the primary role of valuation in MaineDOT is to establish the fair market value of property that will be acquired for transportation projects in Maine. MaineDOT's property valuation function has the following additional important value-related roles and purposes:

1. Develop project right of way cost estimates.
2. Perform appraisal review services.
3. Advise on proposed administrative settlements.
4. Provide expert testimony before the State Claims Commission.
5. Assign, oversee and evaluate Consultant Appraisal services.
6. Value uneconomic remnants.
7. Advise on fair rents for MaineDOT property under management.
8. Determine market rents and certain relocation benefits.
9. Advise on valuation for the disposal of surplus property.

#### **4-1.05 Appraisal Defined**

The term "appraisal" is defined in Section 101(13) of the ***Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (The Uniform Act)*** as:

A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

#### **4-1.06 Fair Market Value Defined**

For the purpose of valuing the property, including land and any building, structure and improvement thereon, acquired under the power of Eminent Domain by The Maine Department of Transportation, *Fair Market Value* is the amount of money (cash or its equivalent) which, as of the date of valuation:

1. An informed and knowledgeable purchaser willing, but not obligated, to buy the property would pay to an informed and knowledgeable owner willing, but not obligated, to sell it. ,
2. Taking into consideration all uses for which the property is suited and might in reason be applied; including, but not limited to the present use or highest and best available use taking into consideration the existing zoning or other restrictions upon use and the reasonable probability of a change in those restrictions.
3. Allowing a reasonable period of time to effectuate such sale.
4. Disregarding any decrease or increase in fair market value of such real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner.
5. Disregarding the fact that the owner might not want to part with the land because of its special adaptability to the owner's use.
6. Disregarding the fact that the taker needs the land because of its peculiar fitness for its purpose.
7. Disregarding any "gain to the taker", i.e., not giving consideration to the special use of the condemner as against others who may not possess the right of Eminent Domain.
8. Including the value of any buildings, structures, or improvements located upon the land, which are required to be removed or which it is determined will be adversely affected by the use to which such real property will be put, regardless of whether such building, structure or improvement is classified as real or personal property under local law. Such buildings, structures and improvements are valued based upon their contribution to the fair market value of the real property to be acquired or their value for removal from the real property (salvage value), whichever is greater. This includes tenant owned buildings, structures, or improvements, even if the tenant has a right or obligation to remove the building, structures, or improvements at the expiration of the lease term and even if classified as personal property under local law.
9. Fair market value, based upon adequate recent comparable sales and offering data is usually the measure of just compensation.

#### **4-1.07 Appraiser Qualifications**

The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignment, and their qualifications consistent with those necessary to complete the required scope of work. As a measure of the level of qualifications, the Chief and Senior Property Officers will consider the following:

- **Competency:** The appraiser must have the knowledge and experience to identify the appraisal problem and to complete the assignment. If the appraiser lacks the knowledge and experience, it should be disclosed and the methods for gaining the requisite knowledge to complete the assignment discussed and documented.
- **Experience:** General appraisal and valuation related experience will be considered, including experience reading plans and completing prospective appraisals. The appraiser should be able to demonstrate experience in solving similar appraisal problems and appraising similar properties as in the appraisal assignment..
- **Education:** Post secondary education, and college degrees in real estate and related fields will be considered.
- **Training:** Specific professional courses and seminars in real estate or real estate appraisal offered by various professional organizations will be considered in determining appraiser qualifications. Particularly important are courses in appraisal for condemnation, for litigation or the appraisal of partial interests.
- **Other:** Certifications, licenses, professional designations and memberships in professional organizations are also considerations in evaluating an appraiser's qualifications.
- **Class Specifications:** Specific requirements are also found in MaineDOT class specification descriptions for Assistant Property Officer (Right of Way Appraiser I); Property Officer (Right of Way Appraiser II) ; and Senior Property Officer (Right of Way Appraiser III).

All Consultant Appraisers assigned to perform appraisals will be certified or licensed by the Maine Department of Professional and Financial Regulation – Office of Licensing and Registration as follows:

1. Certified General Appraiser – May appraise real property of all types.
2. Certified Residential Appraiser – May only appraise residential real estate or real property of one to four units or land related to that property without regard to transaction value or complexity when a net income capitalization analysis is not required.
3. Licensed Real Property Appraiser – May appraise only residential property of one to four units having a transaction value of less than \$1,000,000.

#### **4-1.08 Organizational Placement**

The valuation function operates under the Bureau of Project Development Division of MaineDOT. The Director of the Property Office and the Chief Property Officer direct the function. Appraisal personnel (Appraisers {Property Officers} and Review Appraisers {Senior Property Officers} are assigned within MaineDOT's Highway and Bridge. Personnel are further assigned to project teams within each program.

#### **4-1.09 Controlling Laws and Regulations**

Real property valuation is subject to the following Federal and State legal authorities:

1. U.S. Constitution, 5<sup>th</sup> and 14<sup>th</sup> Amendments;
2. Maine State Constitution, Article 1 Section 21;
3. 23 **MRSA** III.2 Section 153-B(2);
4. ***Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** (as amended 1987), Title II;
5. 23 **CFR** 710; and
6. 49 **CFR** 24.

In addition to the above regulations, operation of the valuation function is subject to civil rights laws pertaining to all Departmental activities that involve employment, contracting for services and providing program services and benefits to the public.

#### **4-1.10 Contracting for Valuation Services**

MaineDOT valuation services are performed both by staff employees and by private consultant (fee) personnel. Fully qualified Staff Appraisers and Review Appraisers provide valuation and related services for right of way acquisition on the MaineDOT capital improvement program and also manage contracted valuation services. Consultant Appraisers are employed as required to meet workload needs of the transportation capital program or to provide specialized expertise that is not available within the Department.

Contracting right of way services is fully discussed in Chapter 9. The following is a summary of requirements that are pertinent to appraisal and other property valuation services:

##### **4-1.10(a) Contracted Services**

Services that may be contracted are:

1. Preparation of Full Narrative Appraisals, including Before and After Reports;
2. Preparation of Short Format Appraisals;
3. Expert testimony;
4. Project right of way cost estimates;

5. Preparation of the project data package; and
6. Supplemental appraisal services relating to changes in project scope, parcel ownership, unanticipated property impacts or the need to update valuations.

#### **4-1.10(b) Contracting Modes**

The above services may be contracted in the following modes:

1. Individual parcel or project valuation assignment;
2. Contract for valuation services for a specific period of time on a call basis;
3. Combined with other functions such as titles, acquisition and relocation for a combined “turnkey” right of way service contract; or
4. Placed in an engineering design or design/build contract for a specific project.

#### **4-1.10(c) Fee Appraisal Agreement**

Appraisal services on a project or parcel basis will be contracted by executing an Appraisal Agreement. The appraisal assignments will be listed by parcel number and owner on the Schedule of Appraisals, which will be referenced by and attached to the Appraisal Agreement.

#### **4-1.10(d) The Appraisal Register**

The Appraisal Register is the list of Consultant Appraisers who have been pre-qualified to work for MaineDOT, in accordance with MaineDOT Consultant Procedures. Periodically, on a need basis, the Department will advertise for Appraisers to submit qualifications and an application for inclusion on the Register. Appraisers may apply for inclusion on the list at any time at their own initiative.

The Property Office is responsible for maintaining the Appraisal Register. The Chief Property Officer will review the list and new applications and then recommend additions or deletions to the Register. The Register will be updated at least once every 2 years. Applicants to the Appraisal Register will be advised in writing of the disposition of their applications. Persons who are deleted from the Register will also be advised in writing if a current mailing address is known. The Chief Property Officer will make a record of its proceedings and decisions.

The Chief Property Officer will determine the required content of an application for the Register. The Chief Property Officer will periodically confer with the Contract Procurement Office (CPO) to determine ways to increase applications from qualified contract appraisers who are minorities or who qualify as a Disadvantaged Business Enterprise (DBE).

#### **4-1.11 Quality Assurance**

Quality assurance in the valuation function is an inclusive process of evaluating performance and developing ways to continuously improve the accomplishment of program goals. Quality assurance is a responsibility that is shared by all persons and administrative levels involved in the valuation function. The Property Office will establish goals and provide policy guidance for improving the level of quality in the valuation process. The Chief Property Officer will propose and coordinate quality assurance activities that will involve all valuation staff, which are scaled to the staff resources and current project workload. All professional staff will perform specific quality assurance tasks focusing on one or more of the factors listed below:

1. Effective coordination with Project Team Members responsible for other project development activities;
2. Timely assignment of Staff and Consultant Appraisers;
3. Assessment of appraisal-related training needs of staff personnel;
4. Identification of critical path tasks involving appraisals and valuation to eliminate barriers to timely completion of these activities;
5. Evaluation of Consultant Appraiser performance concerning quality of documentation, analysis of data, and timely delivery of appraisal products;
6. Effective performance evaluation and feedback of staff valuation personnel;
7. Development and understanding of valuation policy, practices and agency forms that support the effective and expeditious acquisition of right of way; and
8. Participation in evaluations (including 360-degree evaluations).

Quality assurance activities and tasks performed by professional staff will be reported in a manner outlined in Chapter 10 of this Manual. The goal is to continuously improve the performance level of valuation activities (e.g., appraisals, appraisal review, estimates) in terms of cost efficiency, timeliness and quality of work products. MaineDOT's continuing refinement of quality assurance includes the development of performance standards and evaluation methods to establish goals and measure progress in meeting goals.

##### **4-1.11(a) Evaluation**

On completion of an appraisal, the Appraiser's performance will be evaluated by the Review Appraiser or the Senior Property Officer. The MaineDOT Consultant Evaluation Form will be used for this purpose for both staff and consultant appraisers. A copy of the completed Form

will be provided to the Appraiser and a copy will be routed to the Chief Property Officer. The evaluations will be considered in completing staff appraiser's annual performance evaluations and in determining whether to re-employ consultant appraisers.

#### **4-1.12 Scope of Work**

The Scope of Work concept is coming into wide acceptance in the appraisal profession. Scope of work is adopted by the Uniform Act Final Rule effective Feb. 3, 2005 and is taking a more prominent role in the Uniform Standards of Professional Appraisal Practice, (USPAP).

Scope of work is defined as “the type and extent of research and analysis in an assignment”. An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of work. Scope of work includes but is not limited to

- The extent to which the property is identified,
- The extent to which tangible property is inspected,
- The type and extent of data researched,
- The type and extent of analysis applied to arrive at opinions or conclusions.

Scope of work is a written statement agreed upon by the appraiser and MaineDOT's Senior Property Officer. The scope describes the work that the appraiser is assigned to do and which reporting format as described in Section 4-2 is appropriate. The scope of work should be developed cooperatively by the appraiser and the reviewing appraiser or Senior Property Officer prior to the appraiser beginning the assignment and define the general parameters of the work. The statement may be updated as necessary as the work progresses.

MaineDOT uses three appraisal formats in developing property appraisals. A description of each of these formats may be found in section 4-2. Each parcel should be initially evaluated by the review appraiser to determine scope of work and appraisal format. The review appraiser and appraiser can discuss the initial evaluation and determine if any adjustments are necessary. When the appraisal challenges on all the parcels on the project are similar, a single scope of work for the project is appropriate. Where one or more parcels have unique issues or present complex valuation problems, scopes of work based on the specific parcel issues should be developed. For more information of Scope of Work requirements, refer to 49 CFR 24.103(a) (1) thru (5)

## 4-2 VALUATION FORMATS

### 4-2.01 General

MaineDOT's process of determining fair market value includes four levels of valuation that correspond to the complexity of the acquisition. The levels differ in their format and degree of documentation. However, all result in a determination of value that is supported and fairly arrived at and that meets Constitutional obligations as outlined in the Uniform Act, and Maine Statutory standards for just compensation.

In addition to the instructions on valuation formats that are provided in this Section, the Appraiser will be familiar and comply with the guidance on special topics provided in Section 4-3. These provisions apply to valuations performed under all formats and are required by **Maine Revised Statutes** and/or Federal law or regulation.

MaineDOT has the responsibility to assure that appraisals are relevant to its program needs and reflect established and commonly accepted Federal and federally-assisted program appraisal practice. At minimum the appraisal product should comply with the definition of an appraisal in 4-1.05 and the following five requirements:

- An adequate description of the physical characteristics of the property being appraised (and in the case of a partial acquisition an adequate description of the remaining property) including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of the highest and best use, and at least a 5-year sales history of the property.
- All relevant and reliable approaches to value consistent with established Federal and federally assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.
- A description of comparable sales including a description of all relevant physical, legal and economic factors such as parties to the transaction source and method of financing, and verification by a party involved in the transaction.
- A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any to the real property where appropriate.
- The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

### 4-2.02 Report Style and Presentation

All reports will be bound in the left margin, with a durable cover. The binding must allow easy removal of individual pages. The cover will be labeled to identify the project and the city or town where it is located. All pages will be numbered consecutively and will indicate the project number, parcel number and owner's name. The location of the property will be identified by street address, or other identifier that will enable the property to be located for field view.

More than one appraisal may be included in one volume. Where a large number of appraisals are submitted on one project, the reports will be submitted in two or more volumes. The Appraiser will submit one original volume and one duplicate volume, each containing original signature and photographs.

The Appraisal Report will be structured in three parts:

1. Part I – Preface;
2. Part II – Description, Analysis and Conclusion; and
3. Part III – Addenda.

Supplemental information that does not bear directly on the valuation may be included as an Appendix. Avoid bulky attachments. It is sufficient to refer to supporting Reports as being available on MaineDOT request.

#### **4-2.03 Value Finding Format**

The FHWA encourages agencies to allow use of the Value Finding Appraisal format to reduce appraisal time and costs.

The MaineDOT Value Finding Appraisal may be used only when:

The acquiring agency is required to prepare an appraisal even for low value acquisitions, if the acquiring agency has elected not to use the waiver of appraisal provision on the parcel, or the waiver provision has failed to generate a settlement.

The Value Finding Appraisal can be used for simple acquisitions that are of low value and meet the other requirements set forth below.

The acquisition involves only vacant land and/or land with improvements where the impact to the improvements is minor and there is no loss in value to the remainder.

Highest and best use is the present use and is not materially affected by the proposed improvement.

Fair market value can adequately be estimated by the sales comparison approach with only minor adjustments, if any, required.

Damages are so minor they require only a brief explanation or analysis.

This form of appraisal can be used on uncomplicated takings where adequate market data is available and there are no special benefits, nor severance damage accruing to the remainder property other than minor replacement or re-establishment items measurable by the "cost to cure".

Examples of "cost-to-cure" items might be: reconnected piping, replacing septic systems, replacing walks, steps or drives, moving fencing, etc.

Examples of uncomplicated takings might be unimproved lots, strip taking not involving severance damages or benefits, but including minor structures, signs or other land improvements.

Value Findings will be developed by qualified staff appraisers or qualified technicians in accordance with MaineDOT Specifications..

#### **4-2.04 Short Format Appraisal**

The Short Format Appraisal is appropriate for acquisitions where there are no severance damages other than those easily supported by a cost to cure, and the following additional conditions are present:

1. The land acquired is vacant or includes only minor improvements.
2. The acquisition does not affect the highest and best use of the property.
3. The property to be acquired is a total acquisition.

For total acquisition parcels or acquisitions involving significant improvements all three approaches to value must be considered and if any approach to value is excluded its omission must be explained.

When there is adequate market data, the comparable sales approach to value may be sufficient for partial strip acquisitions that have no improvements or only minor improvements.

Content and analysis of the short format appraisal must be sufficient for the appraisal problem and the anticipated magnitude of damages.

Both Staff and Consultant Appraisers perform appraisals using the short form format.

#### **4-2.05 Detailed Narrative Report**

The Detailed Narrative Report is MaineDOT's detailed Appraisal format that is applicable in all acquisitions in which the Waiver Valuation Procedure, Value Finding, or Short Format Appraisal is not applicable. Generally, its use is reserved for complex acquisitions including partial takes where there are severance damages to the remainder area and require a before and after appraisal.

The Before and After Appraisal is performed by experienced Staff Appraisers or by Consultant Appraisers listed on the MaineDOT Appraisal Register who are certified or licensed for the type of assignment by the Maine Department of Professional and Financial Regulation – Office of Licensing and Registration.

The Appraiser will use all relevant approaches (e.g., market, cost, income) in determining the value of the part acquired and the value of the remainder. The Appraiser will explain not using an approach unless it is obviously not relevant from the nature of the Appraisal problem.

Appraisers are responsible for informing MaineDOT of special circumstances that will affect the prescribed format and for requesting advice as to how to proceed.

### **4-3 SPECIAL APPRAISAL INSTRUCTIONS**

#### **4-3.01 General**

The topics addressed below provide information and instructions on requirements that either cut across all appraisal formats or have important specialized application. Several requirements derive from the fact that MaineDOT, having power of eminent domain, operates under State and Federal laws and regulations that do not apply to private real estate transactions. In addition, MaineDOT has certain procedural requirements to insure citizens that property acquisition activities are conducted in a fair and equitable manner. Appraisers who perform valuation services for MaineDOT must know and apply the rules and requirements so that MaineDOT fulfills its varied obligations.

#### **4-3.02 The Appraiser's Certificate**

A signed and dated "Certificate of Appraiser" will be included in each appraisal as the last page of the Report. It is the Appraiser's responsibility to be familiar with the content of the Certificate before accepting appraisal assignments. Any questions on interpretation or applicability should be resolved with the project Review Appraiser.

#### **4-3.03 Tenant-Owned Improvements**

Buildings, structures or improvements to real property that are owned by tenants will not be included in the appraised value of the property acquired. Instead, they will be listed individually on a separate Report and appraised as to their contributory value to the property. The Appraiser will also estimate each item's salvage value, which is the same as the value for removal from the site. The Department will make a separate acquisition offer to the tenant owner of the improvements if the landowner disclaims ownership interest in the items in writing.

If the Appraiser becomes aware of tenant-owned improvements during inspection of the property, or if ownership of certain items is disputed between the landowner and a tenant, this should be reported to the project Review Appraiser, who will instruct as to how these items should be treated in the appraisal. See Chapter 5 for policy on the purchase of, and payment for, tenant-owned improvements.

#### **4-3.04 USPAP Jurisdictional Exception**

Federal and federally assisted real property acquisition is governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and implementing regulations found in 49 CFR Part 24. The criteria governing appraisals are found in 49 CFR 24.103 and have the force of law. Staff, certified and licensed appraisers in Maine and other States working on federally assisted projects are to prepare their reports in accordance with these regulatory requirements. Independent certified and licensed appraisers are required by certification statutes to comply with the Uniform Standards of Professional Appraisal Practice

(USPAP), promulgated by the Appraisal Standards Board of The Appraisal Foundation. The appraisal requirements of 49 CFR 103 and 104 are intended to be consistent with USPAP. If these requirements are found to differ from USPAP, the appraiser is required to follow the requirements of the MaineDOT. The “Jurisdictional Exception” rule is the USPAP provision that retains applicability of the remainder of the Uniform Standards if any portion is determined to be contrary to law or public policy. This recognizes the preeminence of law and public policy and allows a certified or licensed Appraiser to comply with MaineDOT Appraisal Standards (49 **CFR** 24 and 23 **MRSA** 153-B) without violating the USPAP. Note the provision in the Certificate of Appraiser (Form VL-9): “That this appraisal assignment is completed in conformance with Federal Law as outlined in the Uniform Act and 49 CFR 24.103 and MaineDOT procedures as outlined in Maine DOT policy and procedural manuals.

Provisions in USPAP require an appraiser to identify the part or parts of the USPAP disregarded in applying the Jurisdictional Exception, and to state the authority justifying this action. Appraisers who have questions or concerns about MaineDOT Appraisal Standards as they relate to the USPAP should address them to the MaineDOT project Review Appraiser or Chief Property Officer.

#### **4-3.05 Compliance with Civil Rights and Nondiscrimination Requirements**

MaineDOT directs the attention of Consultant Appraisers to the obligations stated in Appendix A of the Appraiser Agreement, titled “Notice to Fee Appraisers – Compliance with Title VI of the Civil Rights Act of 1964 and Subtitle A, Title 15, **Code of Federal Regulations**, Part 8 for Federal Aid Contracts.”

#### **4-3.06 Additional Appraisals**

The Chief Property Officer may authorize subsequent appraisals if necessary to support valuation of the property. Following are several, but not the only, circumstances in which a subsequent appraisal may be secured:

1. Unclear or disputed highest and best use of property,
2. High-value property (generally greater than \$300,000),
3. Significant passage of time from the date of appraisal to the date of acquisition, and
4. Unique property or complex acquisition.

#### **4-3.07 Real vs. Personal Property Decisions**

The determination of what is realty and what is personalty is critical to determine just compensation and relocation benefits and eliminate duplicate payments. The determination of realty/personalty items is part of the appraisal process. The appraisal report must specifically itemize items of personalty and items of real estate. On site meetings between the appraiser,

property owner, reviewer and relocation staff may be necessary in some cases. There may be items on the appraised property for which a question arises as to status as either real property or personal property. The MaineDOT project Review Appraiser should be consulted for specific instructions about these items.

Scopes of work for appraisal assignments must include the requirement that the appraiser differentiate between items of real estate and personal property, if any, list each in the appraisal report and specify ownership.

#### **4-3.08 Fencing**

The Appraiser will describe the type, condition and quantity (linear feet) of any fencing in the acquisition area. There will normally be no valuation, or payment to the property owner, for fencing that the plans indicate will be replaced by MaineDOT. If fencing will not be replaced by MaineDOT, the Appraiser will estimate its contributory value to the property and separately state the salvage value. If there are any unusual circumstances, the Appraiser will consult the project Review Appraiser.

#### **4-3.09 Recording Critical Dates**

The Appraiser will record the following dates and place them in the appraisal on the final Estimate and Summary of Damages page:

1. Date the owner was contacted regarding the opportunity to accompany the Appraiser in inspecting the property pursuant to 23 **MRSA** 153B(2) and 49 **CFR** 24.102(c)(2);
2. Date of inspection of the property;
3. Date the value applies; and
4. Date the appraisal is signed by the Appraiser.

The date value applies must be the same as the valuation date shown on the certificate of appraiser.

At or near the date of condemnation, the project appraiser will receive a list of unsettled parcels and a copy of the notice of layout and taking from the review appraiser. The appraiser will then update the original and duplicate appraisals on all unsettled parcels to match the date of condemnation. Required actions include:

- 1) An investigation of any new market data in the project area that has occurred since the appraiser did the prior market research;
- 2) A re-inspection and a representative photo taken of all unsettled parcels.

- 3) A cross-check of the notice of layout and taking with the appraisal to ensure that the acquisition areas are consistent.
- 4) A determination of the effect of any new market data on the appraised values;
- 5) An update of appraised values, if necessary; and
- 6) A new “date value applies” in the appraisals of all unsettled parcels on the Estimate and Summary of Damages and the Certificate of Appraiser pages to match the date of acquisition. An additional “date of inspection” should also be added on the Estimate and Summary of Damages page.

Any new market data affecting values will be provided to the review appraiser for their inclusion in the appraisal where appropriate. Estimate and Summary of Damages and Certificate of Appraiser pages will be revised and transmitted to the review appraiser for their insertion into the original and duplicate appraisals to replace existing pages and if appropriate, the determination of Just Compensation will be updated. New pages will reflect the updated inspection and valuation dates for all unsettled parcels.

#### **4-3.10 Cost to Cure Items**

Minor physical damage to property may be valued on a cost to cure if the value on this basis is less than the diminution in value if such cure were not made. Items that may be considered for cost to cure include reconnected utilities, fence relocation or replacement, walkways, steps, handicap ramps, septic systems, drives, etc.

The Appraiser will state the basis for any cost to cure estimate and the source of information used. This may be consultation with a (named) contractor, reference to the cost of recent similar work, advertised installed prices or application of unit costs confirmed locally. The appraiser's estimate will be what an owner would incur by hiring a qualified local contractor to perform the entire job, including any incidental expenses.

#### **4-3.11 Wells**

Wells that are the primary water supply to the property and are within the acquisition area or affected by the construction are eligible for replacement through the Department's Well Claims program that is administered by the MaineDOT Environmental Office. Secondary or unused water supplies are appraised as to their contributory value to the property.

#### **4-3.12 Signs**

The status of signs within the acquisition area relative to realty vs. personalty should be determined early in the project development process as discussed in Section 4-3.07. Items to

consider in making the determination are discussed in Chapter 6 Relocation Section 6-6.11. Encroachment signs are referred to the Bureau of Maintenance and Operations for removal.

#### **4-3.13 Items Not Compensable under Maine Law**

The following are not compensable appraisal items under State law. However, several items are addressed in the relocation program. The Appraiser will not include any listed items as elements of damage on Appraisal Reports submitted to MaineDOT.

1. Removal cost of personal property;
2. Breakage of personal property;
3. Cost of replacement premises exceeding the value of old premises;
4. Business or income opportunity loss;
5. Business interruption;
6. Inferiority of new location;
7. Non-availability of acceptable replacement location;
8. Loss of goodwill;
9. Loss of profitable contracts;
10. Damages from frustration of contracts;
11. Loss of privacy;
12. Owner or tenant inconvenience;
13. Speculative damages (includes all above);
14. Decrease in business value on premises;
15. Value to taker;
16. Value to owner, as opposed to market value;
17. Damages due to the exercise of police power, such as restriction of traffic due to detours during construction, or installation of traffic control devices as part of the highway project; and

18. Circuity of travel (a business does not have a proprietary interest in the traffic passing its site).

If the Appraiser has any questions on any of the above items, they should contact the project Review Appraiser for clarification. The Review Appraiser may request a written opinion from the Legal Services Office for inclusion in the appraisal report.

#### **4-3.14 Opportunity for Owner to Accompany Appraiser**

The Appraiser will contact the property owner and offer an opportunity for the owner or a representative to accompany the Appraiser during an inspection of the property pursuant to 23 **MSRA** 153B(2) and 49 **CFR** 24.102(c)(2). The Appraiser will record the date and the manner of the owner contact and any response that was received.

If the owner cannot be contacted for any reason, or the owner is not responsive, the Appraiser will record efforts to contact and advise the MaineDOT project Review Appraiser.

#### **4-3.15 Information Provided to Appraiser**

On assignment, the Appraiser will be provided with the Project Data Book and the following items to the extent applicable:

1. Signed copy of the Appraisal Agreement and the Schedule of Appraisal (Contract Appraiser);
2. Right of way plan sheets;
3. Construction plan sheets;
4. Five-year Conveyance Report;
5. Property Owner Report;
6. Preliminary Title Report, if available;
7. Aerial photos, if available;
8. Timber cruise, if available; and
9. Specialty Reports, if secured by MaineDOT.

**4-3.16 Appraisal Corrections or Additions**

Appraisal contracts are not completed until the appraisal(s) are accepted by the MaineDOT project Review Appraiser. Corrections or additions to appraisals will be submitted promptly as replacement or addendum pages that have been dated and initialed by the Appraiser.

Appraisal changes, valuation updates or additions caused by a change in the scope or character of work will be submitted and paid as agreed on between MaineDOT and the Appraiser.

**4-3.17 Conflict of Interest – Procurement**

No employee, officer or agent of MaineDOT may participate in the selection, award or administration of any contract for the Department if that person has a financial or other interest in the firm selected for the award.

Employees, officers or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to these agreements.

Any violation of the above is subject to the penalties, sanctions or other disciplinary actions in accordance with State law and regulations.

**4-3.18 Specialty Appraisal Reports**

Specialty Appraisals are necessary if the acquired property contains items that contribute to the value of the real estate that are not normally found in real estate transactions. This may include installed machinery and equipment, fixtures determined to be real property, or special-purpose properties built to a specific function or use. If the Specialty Appraisal has been performed by a MaineDOT Staff Appraiser, or by a Consultant Appraiser hired by MaineDOT, it will be reviewed by MaineDOT before it is transmitted to the real estate Appraiser. The real estate Appraiser will be instructed to use the Specialty Report to determine the value the specialty items contribute to the value of the whole property. It is not acceptable to simply add the Specialty Report value to the value of the real estate without the specialty items.

**4-3.19 Confidentiality of Records**

All Appraisal Reports and related documents and information are confidential documents and information will not be disclosed to anyone other than right of way officials of MaineDOT or the Federal Highway Administration until so authorized by those officials or by operation of law.

Appraisals are completed with MaineDOT as the client and intended user. The intended use of the appraisal is to provide a basis for the determination of just compensation and negotiation for the acquisition of real estate necessary for transportation projects.

23 **MRSA** Section 63 provides that records and correspondence relating to appraisals and other right of way functions “shall be open for public inspection after 9 months following the completion date of the project according to the record of the Department, not including those claims which have been appealed to the Superior Court, and said records to be open for public inspection following award of the court.” Consult the MaineDOT Legal Services Office for interpretation of this provision.



## **4-4 PROJECT DATA BOOK**

### **4-4.01 Purpose of the Project Data Book**

The Project Data Book is a cumulative collection of factual data that have been gathered in support of the preparation of project right of way cost estimates, Appraisal Waiver Worksheets and appraisals for the project. The Project Data Book consolidates general data for a related group of individual parcel reports. It avoids costly duplicative efforts to compile the information that serves a common need of Appraisers, Review Appraisers and other right of way personnel assigned to a project. On larger projects, the Project Data Book promotes project consistency and efficiency.

The Project Data Book compiles information that is used on appraisal comparable data sheets, neighborhood and regional descriptions, general exhibits, right of way cost studies and information relating to the area or region trends (time, utility, location, etc.). The information is limited to factual data. Evaluation and analysis is performed in the Appraisal Reports and other documents that are served by the project data that are compiled in the Data Book.

### **4-4.02 Responsibility for Compiling the Project Data Book**

The Data Book is normally prepared by staff personnel who are trained and experienced in the appraisal process. It is produced under oversight of a Review Appraiser or the Chief Property Officer. A Contract Appraiser may also be employed as necessary.

### **4-4.03 Content of the Project Data Book**

The content of the Project Data Book is intended to reflect the scope and complexity of the project it represents. The level of detail and corresponding effort necessary to complete the data book should vary with the number of parcels on the project, the range of uses, the type of acquisitions and the extent of recent real estate sales market activity. The following summary of content is intended to represent the necessary level of detail and effort for a complex project of significant scope. The content of non-complex projects may be modified appropriately to suit the intended need for these data in relation to the actual project under development.

The intended scope and content of the Project Data Book will be understood and agreed on by the MaineDOT staff who will develop the Book before data collection begins. If the work is contracted to a private Appraiser, the scope and content will be mutually agreed on by the Consultant Appraiser and the Contract Administrator and will be reflected in the Consultant agreement document.

Data collection for the Project Data Book will continue through submission of the last appraisal on the project. This is necessary so that late project appraisals will have the same benefit of current market data as appraisals that are prepared early in the project. Revisions and updates to the Data Book will be dated and signed by the person entering the data.

The Project Data Book will contain the following elements:

1. Title page;
2. Table of contents;
3. Qualifications of preparer(s);
4. Assumptions and limiting conditions;
5. References;
6. Description of project, maps, aerial photographs, etc.;
7. Area and neighborhood analysis;
8. Market data; and
9. Supporting documentation and exhibits.

Each of the above elements is described fully in the following Sections.

#### **4-4.03(a) Title Page**

This will include:

1. Project location by municipality,
2. Project number and PIN,
3. MaineDOT identified as the client and intended user,
4. Effective date of Project Data Book, and
5. Name(s) and affiliation of person(s) preparing the book.

#### **4-4.03(b) Table of Contents**

List the major parts of the Report and subheadings with page references.

#### **4-4.03(c) Qualifications of Preparer(s)**

Provide the qualifications of all persons providing significant contribution in preparing the Project Data Book.

#### **4-4.03(d) Assumptions and Limiting Conditions**

Assume that the project will be constructed in accordance with the current design plan, unless there is information to the contrary. This must be cited by source and in specific detail. State any assumptions applicable to the research and assembly of the Project Data Book.

**4-4.03(e) References**

Provide names and titles of individuals who have supplied significant information for the Data Book, (e.g., municipal officials, contractors, and real estate professionals).

**4-4.03(f) Description of the Project, Maps, Aerial Photographs, etc.**

Describe, concisely, the proposed transportation project improvement. Describe resulting changes in access, frontage, elevation, drainage, utilities and proximity. Include a project location map relating the project location to the municipality or area. All maps will include a north arrow and identification of the project and the municipality. All maps and plans may be bound as facing pages opposite the description, tabulation or discussion topic to which they relate.

**4-4.03(g) Area and Neighborhood Analysis**

Present a narrative discussion and analysis of the following items:

1. Define and delineate the real estate market area.
2. Evaluate and analyze the current demand and supply relationships in the local real estate market and describe factors that influence the market.
3. Describe the existing supply of property for the specific uses within the defined market area that are affected by the project.
4. Identify uses, sites and parcels of historic significance and describe the effect on the project of these places.
5. Discuss current patterns of land use and trends in the area first and the neighborhood second. This includes new construction planned or under way, vacant sites as potential competition for the subject(s), adequacy and availability of utilities, access, impaired sites nearby, etc.
6. Discuss current economic factors affecting the area and neighborhood, including population, employment, income, interest rates, rents, zoning, and other regulations. Discuss the probability of future changes for these factors, as relevant.
7. Describe the neighborhood before and after completion of the proposed transportation project.
8. Forecast how anticipated changes in the inventory of real property resulting from the project will affect the subject neighborhood.

9. Attach and provide a brief evaluation of any published economic, damage, cost or other general studies that will be relevant for use in any property valuations.

#### **4-4.03(h) Market Data**

The following applies:

1. Reporting. State the extent of the process of collecting, confirming and reporting data. This statement of scope should be brief. If the property is improved and land-only valuations are required, include a statement limiting the scope. If Before and After Appraisals are anticipated, the data collection process must include sufficient comparable sales of the after condition of property as well as comparable sales of the before property.
2. Method. The sales comparison approach is the most easily understood method for the presentation of market value and just compensation. Greater reliance will often be placed on this than on other approaches. The market approach only is required for most parcels. It is therefore imperative that sufficient relevant market data are included for analysis in order to provide a sound basis for conclusions made from the sales comparison approach.

Current accurate comparable sales information will be provided in a quantity that is sufficient to support the value conclusions as representative of the local market. Data must provide a sound basis for valuation of both the before and the after condition of each parcel. Three comparable sales are generally considered the minimum acceptable support for simple valuations; more are recommended when available, particularly for complex appraisal problems.

3. Neighborhood Sales. The market data survey must include an analysis of all recent sales of similar properties in the subject neighborhood. Discuss and evaluate the existing supply of available similar properties (the competition). If relevant, discuss the sales history of comparables as to time on the market, changes in asking price, resale of the same property, and sales agreements that fell through.
4. Value Indicators. The following indicators of value may be included in the Project Data Book for the purpose of illustrating a trend or extreme, but may not be used as the only basis for value:
  - a. Unconfirmed sales,
  - b. Listings,
  - c. Earnest money agreements,
  - d. Offers to purchase,
  - e. Lease or purchase options,
  - f. Sales to or from agencies having power of eminent domain,

- g. Estate sales between relatives,
- h. Trades and/or exchanges,
- i. Sales with generous financing terms,
- j. Foreclosure sales,
- k. Sales made under duress,
- l. Bankruptcy estate sales, and
- m. Auctions.

It is not acceptable to deviate from the foregoing except in rare cases where no other data exists and the Appraiser submits the documents, verification and analysis to the project Review Appraiser for approval for use in an Appraisal Report. Sufficient market data are not always available to evaluate all types of properties subject to acquisition. When market data are limited, or comparability is weak, the Appraiser must demonstrate a concerted effort to obtain other sources or types of supporting data.

5. Inspection of Sales. It is essential to inspect all sales included in the data package. If a timely field inspection is not possible due to weather or other factors, additional documentation of familiarity with the sales will be provided, such as dates of earlier inspections. The sale must be inspected at the earliest opportunity. A waiver for inspection of sales will only be granted under extreme and unusual circumstances. The waiver request will be in writing and will be fully explained and supported.
6. Confirmation of Sale. The Data Book preparer will inspect and personally confirm all market data used for Appraisal Reports. Market sales information is considered reliable when the facts are verified by personal contact with the buyer or seller, or in some cases, agents to the transaction. Not every sale can be confirmed by direct contact with the buyer or seller. In such instances, the Appraiser will verify the transaction facts with the agent or attorney representing the parties or with other source of reliable information. The sale conditions and the source of verification will be identified on the comparable data sheet.
7. Date of Sale. The date of the meeting of the minds, or earnest money agreement date, should be used as the date of sale if possible. Otherwise, the date the deed of transfer was signed, not the date of recording, should be considered the date of sale.
8. Use of Data Gathered by Others. Market data on file with MaineDOT may be shared on request, with no obligation by MaineDOT as to its accuracy or relevance. Any staff or contract valuation professional who receives market data from MaineDOT will independently verify, confirm, and inspect the data if necessary.
9. Comparable Market Data Sheets. A comparable market data sheet (sale sheet) must be included for every sale or value indicator. The preparer is not required to use the MaineDOT Form VL-3, but all pertinent data shown on the Form must be

included in each market data submittal. Descriptions must be sufficiently clear to locate each sale in the field.

Estimate the land/improvement allocation for each improved property. The basis for the allocation, including supporting data, reasoning and correlation, must be provided. A statement that the purchaser or seller allocated the values, or that it came from another appraisal, is not acceptable without further support.

10. Photographs. Attach photos of each comparable property to provide the user with a clear understanding of the property. This requirement applies to both occupied and vacant property. At a minimum, each photo will be identified with the following information:

**All Photos**

Project Number:  
Town:  
Location:  
Looking:  
By:  
Date:

**Sales**

Sale No:  
Grantor:  
Grantee:

**Leases**

Lease No.:  
Lessor:  
Lessee:

11. Sales Summary Chart. Attach a sales summary chart or a recapitulation of the sales data.
12. Sales Map. Include a sale map that shows the location of each sale referenced by number, in relation to the location of the subject property or the project location. The map must have a north arrow and must identify the properties and their locations sufficiently that they can be found in the field.

#### **4-4.03(i) Supporting Documentation and Exhibits**

Attach any documentation or supporting data that may be pertinent to the Report, including:

1. Title reports;
2. Specialty reports;
3. Special instructions from MaineDOT;
4. Legal opinions or references;
5. Cost to cure estimates and calculations, including cost data relied on to establish the contributory value of improvements acquired (improvements must be valued as they contribute to the overall property value; depreciated replacement cost may be an accepted measure of value if it is demonstrated that the market responds in that

- manner; the standard of valuation is the fair market value of the entire property; totaling the separate money values of a property's parts is not acceptable);
6.   Reproduction cost of new buildings and improvements;
  7.   Building inspection reports;
  8.   Rental and cost data survey;
  9.   Zoning ordinances and other land use regulations and maps;
  10.  Copies of zoning changes, applications, maps, meeting minutes and variances to demonstrate the reasonableness and probability of rezoning or variance, if zoning issues are expected to influence value;
  11.  Comprehensive planning documents and maps;
  12.  Subdivision covenants and restrictions;
  13.  Environmental or regulatory restrictions;
  14.  Leases;
  15.  Economic studies;
  16.  Environmental studies or analyses performed (discuss any hazardous materials on the project properties or adjacent properties, recent cleanup of the project or adjacent properties or major cleanup; include information on pending actions that may influence the environmental standing of subject parcels);
  17.  Current dated right of way plans;
  18.  Tax maps;
  19.  Flood plain maps;
  20.  Wetland maps;
  21.  Utilities maps;
  22.  Soils survey maps, soil descriptions and uses, particularly for agricultural use;
  23.  Design reports and project descriptions (design plans should be retimed until superseded or the project is closed out); and
  24.  Assessed values, real estate taxes, trends and equalization adjustment factors.



## 4-5 APPRAISAL REVIEW

### 4-5.01 General

The appraisal review function is an integral part of the valuation process. A determination of fair market value by the Appraiser serves as the basis of the Department's offer of just compensation. Therefore, the appraisal(s) of a property must be reviewed and fair market determination approved before the initiation of negotiations to acquire property or the acquisition by eminent domain.

Beyond the determination of fair market value, the Staff Review Appraiser manages the appraisal process and performs the primary quality assurance role. The Staff Review Appraiser represents the MaineDOT's needs and interests to the appraisal process and represents (and sometimes defends) legitimate appraisal practice to the MaineDOT. The Review Appraiser conveys and interprets appraisal policy, provides information to management on the status of appraisal assignments, evaluates appraisal assignment performance, secures appraisal corrections, and approves completion for payment of appraisals performed under contract.

The Review Appraiser must remain independent and not be influenced to approve a directed value determination or to accept appraisals that are inappropriate or flawed. The Review Appraiser should be flexible enough to help advance the programmatic goals of the Department while not sacrificing appraisal integrity.

### 4-5.02 Review Appraiser Qualifications

The Review Appraiser performs an oversight as well as an operational role in the valuation process. The Review Appraiser will be fully qualified by training and experience to perform the same type and level of appraisals on which reviews are performed. Review Appraiser qualifications should be at or above peer level with the appraiser being reviewed. Qualifications are generally outlined in 4-1.05 (a) and are more specifically described in the Senior Property Officer Class Specification. Additionally, the Review Appraiser must be thoroughly familiar with MaineDOT right of way policies as well as with Appraisal Standards, including the following:

1. Uniform Standard of Professional Appraisal Practice,
2. Uniform Appraisal Standards for Federal Land Acquisition,
3. 23 **MRSA** 153 through 157,
4. 49 **CFR** 24.103, and
5. MaineDOT *Right of Way Manual*.
6. Appraisal principles and practices as applied to the use of eminent domain.

The Review Appraiser is a staff employee of the Department or a fee appraiser contacted by the Department who has extensive experience in the appraisal of property for right of way and who has also performed varied assignments in other right of way functions such as acquisition and property management.

**4-5.03 Appraisal Review Responsibilities****4-5.03(a) Scope of Responsibilities**

On appraisals or other valuation documents reviewed for each parcel, the Review Appraiser is responsible for the following actions and determinations:

1. Insure that all appraisals submitted to MaineDOT contain the necessary documentation and are factually accurate.
2. Insure that the Appraiser's value conclusion contains only value and damage elements that are compensable under eminent domain in Maine.
3. Maintain adequate records of the status of appraisals on a project basis.
4. Secure appraisal corrections or addendums from Appraisers to resolve omissions or errors noted in review.
5. Determine the fair market value of the part acquired and damages to the remainder.
6. Determine the salvage value for improvements or structures that are anticipated to be retained by the owner or sold for removal.
7. Determine the contributory value for any tenant-owned improvements.
8. Determine the cost to cure of minor elements of physical damage.
9. Review Specialty Appraisals as to the way in which the value of the specialty items contributes to the value of the whole property.
10. Prepare parcel related documents, including:
  - a. Form VL-15, Review Appraiser's Value Determination,
  - b. Form VL-16A, Statement of Determined Damages (1),
  - c. Form VL-16B, Statement of Determined Damages (2), and
  - d. Property Tax Pro-ratio (Form VL-14).
11. Prepare project related documents:
  - a. Tabulation of Appraisals,
  - b. Cost Estimate,
  - c. Incidental, and
  - d. Review Appraiser's Summary Report

12. The Review Appraiser's Summary Report will document the findings and conclusions arrived at during the review and will identify each appraisal report as follows:
  - **Recommended:** The recommended appraisal will be the accepted appraisal that serves as the basis for approval and the establishment of the amount believed to be just compensation.
  - **Accepted:** An accepted appraisal meets all requirements of MaineDOT specifications but is not recommended to serve for approval as the basis for just compensation. or
  - **Not Accepted,:** The appraisal does not meet MaineDOT specifications or requirements.
13. Insure appraisal quality.
14. All appraisals must be approved by a Staff Reviewing Appraiser prior to serving as the basis for the Department's determination of Just Compensation.

The above responsibilities are carried out through the activities described in the following sections.

#### **4-5.03(b) Desk Review for Documentation and Accuracy**

The Review Appraiser, or other qualified person under supervision of the Review Appraiser, will make a documentation and accuracy check of the appraisal. This will be performed as soon as practical after receipt of the appraisal but before making a determination of value. The purpose of the desk review is to insure that the appraisal contains all required elements under MaineDOT Specifications and that factual information and mathematical calculations are correct. The desk review will not evaluate matters of valuation judgment. The Reviewer will promptly inform the Appraiser of any errors or omissions revealed by the desk review.

#### **4-5.03(c) Property Inspection**

Typically, the Review Appraiser will make an on-site review of the project and property appraised. The inspection should be performed as recent as is feasible to the time the property is appraised. Earlier inspection, such as just prior to appraisal assignment, will suffice if there are no indications of significant physical change in the property or the market influences in the area of the project.

In some cases on non-complex projects in remote locations, Appraisal Reviews may be accomplished without a property inspection if the Review Appraiser is familiar with the area from previous projects. The Reviewer will rely on previous knowledge, the information contained in each appraisal, and other reliable sources. Any questions regarding omitting the on site reviews should be addressed to the Chief Property Officer.

**4-5.03(d) Appraisal Corrections, Modifications and Revisions**

The Review Appraiser will notify the Appraiser in writing of any needed appraisal corrections, modifications or revisions and set a reasonable date for expected response. If the Appraiser responds with revised appraisal pages, the Reviewer will initial and date them, indicating receipt and acceptance, and place them in the Appraisal Report. Superseded pages will be removed from the appraisal, marked void, and placed in the permanent correspondence file.

Minor changes or clarifications that do not affect the value may be made in ink on the Appraisal Report and then initialed and dated by the Review Appraiser.

At or near the date of condemnation, the review appraiser will obtain a copy of the Notice of Layout and Taking from the condemnation unit and compile a list of unsettled parcels derived from the project negotiator's interim status report. If there are any unsettled parcels on the project, the review appraiser will transmit the list and a copy of the Notice of Layout and Taking to the project appraiser and instruct the appraiser to update those appraisals to the date of condemnation as required in Section 4-3.09 of this Manual.

The review appraiser will ensure that the appraisals on all unsettled parcels have been updated in a timely manner, that all updated pages with corrected dates have been inserted into the original and duplicate appraisal reports and that all superseded pages have been removed. Sixty days after condemnation, the review appraiser will transmit the updated duplicate appraisal and any available negotiator notes or status reports on all unsettled parcels to the Legal Services Office.

**4-5.03(e) Avoiding Value Divergences**

Before the valuation process begins and when using more than one Appraiser to value the same property(s), there are several preventative measures that can be taken in order to avoid or minimize divergences in value:

1. Develop a clear Scope of Work
2. Establish the appraisal problem before the selection of the Appraisers.
3. Assign the Review Appraiser who will review the appraisals before the selection of the Appraisers in order to participate in the determination of the appraisal problem and the selection of the Appraisers.
4. Provide each Appraiser with the same parcel information to insure that it is consistent and accurate. Either provide a list of items considered personally or realty, or work with assigned appraisers to insure a consistent list is developed.
5. Conduct a meeting between the Review Appraiser and each Appraiser to discuss the appraisal assignment without discussing values.

**4-5.03(f) Resolving Value Divergences**

The Review Appraiser will reconcile significantly divergent value conclusions among appraisals of the same property in the manner discussed below.

Widely divergent value conclusions usually arise from 1 or more of the following causes:

1. Difference in judgment among appraisers such as to highest and best use of the property, damages or special benefits to the remainder, adjustments to comparable sales, personal vs. real property, comparables used, selection of capitalization rate, depreciation amounts, etc.; and/or
2. Technical divergences relating to the size of property, age of the improvements, zoning, selling prices of comparables, inadequate data search, leases, non-compensable items, encumbrances, date of valuation, math errors, incorrect or omission of relevant data, etc.

The Review Appraiser is responsible to clearly identify the basis for the difference in appraisal values, and to explain, reconcile or resolve the differences in establishing fair market value. This may necessitate contacting one or all Appraisers to discuss critical elements. The Review Appraiser should not challenge the Appraiser's judgment. The objective is to explore and fully understand the Appraiser's reasoning, and/or to determine whether the Appraiser(s) have considered specific elements that the Review Appraiser considers relevant to value, and that would explain the difference in Appraisers' judgment. The Review Appraiser may ask the Appraiser(s) to submit supplemental information or analysis that will better explain appraisal the appraisal value conclusion.

If the value differential among appraisals is due to factual error, omissions of fact or analysis, or flawed reasoning the Review Appraiser will request the Appraiser to submit correction or reanalysis as appropriate. Flawed reasoning means defect in logic or failure to provide complete reasoning, not merely a difference in judgment between the Appraiser and Review Appraiser.

Differences in Appraiser judgment as to highest and best use may occur in locations that are undergoing transition in land use due to population growth or economic activity. The Review Appraiser is the final authority in determining highest and best use after fully understanding the basis for contrasting appraisal judgments. In making the decision the Review Appraiser should consider the current or currently zoned use as being the most likely highest and best use unless there is a specific compelling reason for a different use (e.g., the probability of rezoning the parcel).

After examining the appraisals and conferring with Appraisers as appropriate, the Review Appraiser may decide that differing value conclusions are not reconcilable and they reflect a reasonable range of expert judgment. It is the Review Appraiser's responsibility to determine which appraisal best represents the most reliable estimate of just compensation for the

Department's proposed acquisition. The Review Appraiser may determine fair market value within the range of the appraisals based on experience and explained judgment. More than one well-supported value conclusion could be the basis for an offer in excess of the approved appraisal when that appraisal is the lower opinion of value. The fair market value may reflect factors such as consistency with unit values established for other properties acquired, or knowledge of recent settlements that may have established a pattern in unit value for the type of land acquired. The Review Appraiser will explain the basis for the fair market value conclusion by writing a memo to the project correspondence file and the Right of Way Support Manager stating the differences between the appraisals and why one was approved over the other(s).

The Review Appraiser may recommend that the Department obtain an additional appraisal to resolve the divergence between two or more appraisals. This is done with the hope the new appraisal will support the opinion of value of one appraisal over the other(s). There is always the possibility that the new appraisal will differ significantly from the previous ones and result in another divergence. At this point the Review Appraiser will decide which appraisal best represents an estimate of just compensation or will form a Reviewer's independent determination of value.

#### **4-5.03(g) Determination of Fair Market Value**

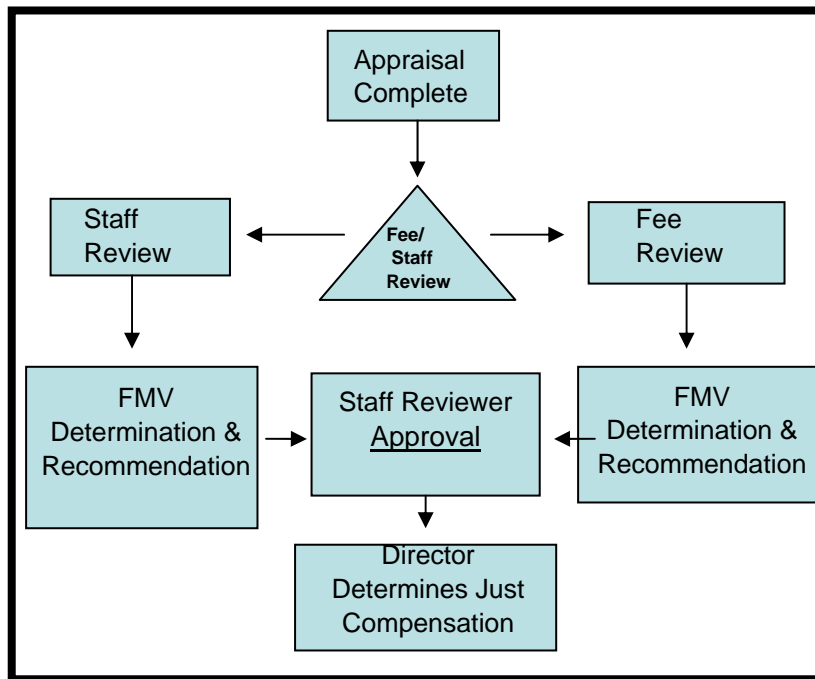
The determination of fair market value is the primary mission of the Review Appraiser. The fair market value is established only after completion of the preliminary steps above, and serves as the basis for the establishment of just compensation by the agency. The determination will be based on the total body of value information available to the Review Appraiser and not exclusively on the Appraisal Report. If the Review Appraiser is led to a value conclusion that significantly differs from the appraisal value, an independent determination will be performed as provided in Section 4-5.04.

#### **4-5.03(h) Approval of the Appraisal**

The appraisal review process examines analysis and presentation of data and value conclusions and assures all appraisal requirements are met. The Review Appraiser accepts the appraisal, uses it as a basis for setting fair market value and recommends approval. This review process may be accomplished by either Staff or Fee Review Appraisers. However, 49 CFR 24.104(a) requires the appraisal *approval* and the establishment of Just Compensation remain the function of an Agency official. At MaineDOT, appraisal approval is the function of a staff review appraiser and the Just Compensation determination will be made by the Director of the Property Office or his designee. Staff review appraisers conducting appraisal reviews will approve the recommended appraisal as an extension of the review process. Staff review appraisers overseeing fee reviews are required to assure the fee review is appropriately conducted and that the fee reviewer's recommendation is supportable. The level of oversight and process will depend on the complexity of the appraisal problem, availability of comparable data and skill and qualification of the fee reviewer.

Once the appraisal has been reviewed and approved, the Review Appraiser will record the determined fair market value on the Tabulation of Appraisals and the Appraisal Summary Memo and will calculate the tax pro-rata for parcels with fee acquisitions. The Review Appraiser will

sign and date the determination of value under the parcel certification statements on Form VL-14, complete Forms VL-15 or VL-16, whichever is appropriate, and complete the Incidental Form and the Cost Estimate Sheet.



**Review & Approval Process**

#### **4-5.03(i) Determination of Just Compensation**

The Cost Estimate Sheet will be transmitted to the Property Office for approval by the Director of the Property Office, or designee, as the Agency's determination of just compensation. While the determination of just compensation will not be less than the approved appraisal it may exceed that amount if the Director determines that a greater amount reflects the value of the property. Place copies of all forms in the project correspondence file. The original VL-15, VL-16A or VL-16B, and Incidental and Cost Estimate Forms are transmitted to the Condemnation Unit of Program Services to be used as the basis for the generation of the offer letters and offer-assent forms which are provided to the Project Negotiator in order to contact property owners and present offers.

#### **4-5.03(j) Quality Assurance – Appraisal Review**

The Review Appraiser's quality assurance role is served in the ongoing conduct of responsibilities. The Review Appraiser is the main contact with the Appraiser and is the available authority on Appraisal Standards as they apply to properties being appraised. The Review Appraiser has the following quality-related responsibilities in addition to determining the fair market value of property to be acquired for right of way:

1. Maintain a good professional relationship with Staff and Contract Appraisers.

2. Respond in a timely manner to questions raised by Appraisers about their assignments.
3. Maintain adequate records of appraisal assignments and due dates to identify potential delays sufficiently in advance to take corrective measures.
4. Review appraisals and related documents to establish fair market value.
5. Provide constructive and timely advice to Appraisers with the purpose of elevating the quality of submitted appraisals to meet MaineDOT standards.
6. Advise Appraisers and MaineDOT management on the application of appraisal methods and standards to unique or complex appraisal problems.
7. Provide information to MaineDOT management as requested on the status of appraisals on active projects.
8. Keep records of the status of appraisals returned for corrections or modifications, and follow up as necessary to secure revisions promptly.
9. Evaluate the performance of Appraisers under contract on completion of assignment.

#### **4-5.04 Review Appraisers Independent Determination of Value**

The Review Appraiser is authorized to form an independent determination of value that differs from the Appraiser's opinion of value. Before making an independent determination, the Review Appraiser will confer with the Appraiser in an effort to reconcile views. In doing this, the Review Appraiser will respect the Appraiser's professional responsibility to advance a value conclusion arrived at by a valid application of the appraisal process.

A Review Appraiser's determination of value will be based on an evaluation of value information by others as further supported by market information and analysis performed independently by the Review Appraiser.

The Review Appraiser will recommend the independent determination on a memo stating the basis and documentation for the determination. A copy of the memo will be placed in both the original and duplicate appraisal along with an accompanying note placed on the Estimate and Summary of Damages page that states: "*See Reviewer's Determination (Date), \$\_\_\_\_\_*". A copy of the memo will be placed in the project correspondence file and another copy will be sent to the Chief Property Officer who, if the value determination is acceptable, will approve it as an acquisition offer.



## **4-6 SPECIAL VALUATION SERVICES**

### **4-6.01 General**

Valuation services in MaineDOT include a variety of tasks beyond establishing fair market value for property that is purchased for right of way. The Appraiser and Review Appraiser staff and contract personnel are called on to support certain activities in project development, property management and relocation. This Section discusses special valuation responsibilities and the coordination and communications necessary to perform these tasks effectively.

### **4-6.02 Project Cost Estimates**

Cost estimates are secured for all phases of project development at various stages (e.g., 6-Year Plan, BTIP, Initial Team Meeting, PDR, Final Estimate). The estimate for right of way may include the cost of titles, mapping, appraisals, right of way acquisition, relocation and demolition. Staff or Contract Appraisers and Review Appraisers are tasked to provide project estimates as required for project development.

### **4-6.03 Valuation Services in Support of Property Management**

Valuation services are requested by the Property Manager through the Senior Property Officer and are provided to support property management activities as follows:

1. Prepare value estimates of surplus property that is offered for sale by MaineDOT.
2. Prepare value estimates of uneconomic remnants.
3. Determine fair market rent for temporary occupancy pending construction.
4. Determine fair market rent for long-term rental of surplus property or air rights.
5. Prepare value access control modifications to support community development or private development.
6. Determine salvage value of acquired buildings and improvements.

### **4-6.04 Valuation Services in Support of Relocation**

Valuation services are requested by the Relocation Manager through the Right of Way Support Manager and are provided to support relocation program activities as follows:

1. Determine rent for continued occupancy of tenants and for owners of MaineDOT-acquired property, not to exceed short-term market rent.

2. Determine economic rent of owner-occupied dwellings purchased by MaineDOT for the determination of owner to tenant replacement housing benefits.
3. Estimate the cost of replacement housing alternatives for displacees requiring housing provided by MaineDOT under provisions of Last Resort Housing.



# CHAPTER FIVE

## ACQUISITION

MAINE RIGHT OF WAY MANUAL

*December 2010*

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# CHAPTER FIVE

## ACQUISITION

### 5-1 PROPERTY ACQUISITION — GENERAL

#### 5-1.01 Purpose and Objectives of the Acquisition Function

The acquisition of property rights that are needed for right of way is an essential element in the highway project development process. Most owners are willing sellers, but the process is involuntary in that owners do not have the option not to sell. It is therefore the Department's first acquisition policy to be respectful of owners and sensitive to their concerns and rights under the U.S. and Maine Constitutions, as well as other applicable laws.

MaineDOT's policy is to acquire the necessary property rights to the greatest extent possible by direct negotiations with the perfection of title done by blanket project condemnation. This requires personal contact with owners, providing **full** information about the project and its effect on their property, as well as an offer of just compensation based on supported valuation. Chapter 5 defines the policies and practices that promote this goal while simultaneously promoting effective and timely delivery of right of way for project construction. It is also intended to **promote public confidence** in MaineDOT's highway program and **protect property owner rights** as required by Federal and State laws and regulations. It is intended to be a flexible document to serve as a reference and guide for Negotiators and other Department personnel.

#### 5-1.02 Laws and Regulations

All citizens are guaranteed by the U.S. Constitution's Fifth and Fourteenth Amendments that they will not be deprived of property without due process of law, nor will property be taken for public use without payment of just compensation. The **Maine Constitution in Article 1 Section 21** states that "**Private property shall not be taken for public uses without just compensation, nor unless the public exigencies require it.**" MaineDOT protects and implements these fundamental rights in performing property acquisition activities.

The United States and the State of Maine have extended Constitutional protections by enacting laws and regulations governing private property acquisition practices. The ***Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** Titles I and III (***Uniform Act***) is the controlling Federal Statute that is codified by ***Federal Regulations*** in 23 ***CFR*** 710 and 49 ***CFR*** 24. ***Maine Revised Statutes*** annotated (***MRSA***) Title 23 establishes the authority and direction under Maine law for implementing these policies. Title 23 ***MRSA*** Part I Sections 154 and 155 specifically focus on the acquisition of property and related negotiations and compensation for the property. It is the Negotiator's responsibility to insure that the provisions of these laws are fully and equitably applied to all property acquisitions and that all affected owners are treated fairly in the acquisition process.

**5-1.03 Organization**

Team members who are trained and qualified as right of way representatives are assigned as Negotiators to perform acquisition activities on the Teams. The assigned right of way personnel operate in a matrix environment under policy direction and overall supervision of Chief Property Officer and the Project Manager, but act as members of the self-directed Project Development Teams reporting to the Senior Property Officer in performing project-related responsibilities. The organizational structure places sufficient authority with the personnel who are responsible for project activities to insure orderly and timely delivery of right of way needed for project construction, while fully protecting owner rights and providing services that are required in laws and regulations.

**5-1.04 Work Flow**

Right of way functions (e.g., acquisition, valuation, relocation, property management) are structured around 3 specific program areas relating to the highway system categories. These program areas are Highway, Bridge, and Multi-Modal or Other. In the first 3 program areas, a Team Negotiator is assigned to perform the negotiation tasks from initial offer through condemnation and post-condemnation activities. In the latter program area, requests for right of way assistance is submitted to the Property Office for assignment to 1 of the other 3 programs or Consultant Resources. Team Negotiators maintain a close relationship with the Senior Property Officer to insure that any issues relative to acceptable completion of the right of way function are within the parameters of Federal and State laws and regulations.

**5-1.05 Quality Assurance/Quality Control (QA/QC)**

QA/QC are the basic program activities that MaineDOT personnel at all levels use to insure that the right of way acquisition process is effectively being accomplished within the established goals and objectives of the Department. Also see Chapter 10.

Quality Assurance includes the policy guidance, program management tools and specific training necessary to insure that responsible personnel are conducting right of way operations in an effective and efficient manner. The various activities used to test and evaluate program activities form the basic elements of the QA function.

Right of way personnel at all levels share a responsibility to strive to improve operational quality. This can be advanced by the following tasks:

1. Follow up phone calls with owners after acquisition process is complete,
2. Tracking and increasing rate of successful settlements,
3. Sharing personal best practices with other staff, and
4. Identifying personal training needs.

## **5-1.06 Conveyance Methods**

### **5-1.06(a) Condemnation**

The primary means of property conveyance by MaineDOT is the condemnation process. This exercise of the State's eminent domain authority extinguishes all claims on the property and provides the State with clear title to that property. Condemnation is initiated after presentation of an offer of just compensation to the property owner. Negotiations based on fair market value continue for a period of 60 days after the date of taking at which time all unsettled parcels are referred to the State Claims Commission, as required under 23 *MRSA* Section 155. Negotiations continue through the construction phase of the project until the parcels are settled or scheduled for hearing with the State Claims Commission.

Condemnation is accomplished by filing a Notice of Layout and Taking with the appropriate County Registry of Deeds. This method is efficient and simple, with one filing in the County records rather than a number of individual deeds. With all rights extinguished, the issue focuses solely on the amount of compensation. This is either resolved through amicable agreement with the property owner based on continuing negotiations, or by decision of the State Claims Commission. The State Claims Commission is an independent impartial board composed of knowledgeable persons that provide an informal forum for hearing compensation claims arising from eminent domain cases. See Section 5-5 for a description of the role and the process of the State Claims Commission.

### **5-1.06(b) Deed**

On projects with only one or a limited number of acquisitions, title to the property to be acquired may be obtained by securing a deed. These are generally instances where sufficient interest can be secured without using eminent domain procedures. This includes acquisitions where the amount of compensation is not disputed and an agreement can be negotiated.

In acquisition by deed, the Negotiator will contact the owner, present all pertinent information, make the offer amount, and secure a Sales-Purchase Agreement or an Option to Purchase, which is then submitted to the Chief Property Officer for approval and execution. If the agreement is for a greater amount than the appraisal, full justification for the additional amount must be included in the accompanying cover memorandum.

Closings are similar to private transactions. When all deeds and documents (e.g., partial mortgage releases, tax lien releases) necessary for transfer of title to the State are in order and a check has been prepared for the parties in ownership, arrangements are then made for completion of the transaction.

Whether acquisition is by filing condemnation or by deed, the rights and interests of affected property owners are protected. The property acquired is valued, the amount of just compensation is determined and an offer in writing is made to the owner. Importantly, negotiation efforts to reach amicable settlement continue after acquisition by condemnation.

**5-1.06(c) Federal Land Transfers**

When it is determined that a project will necessitate acquisition of rights from property owned by the United States of America, the provisions listed in 23 CFR 710.601 should be followed. As explained in paragraph (c) of this CFR, the department can file an application with the Federal Highway Administration or it can make application directly to the land owning agency if the agency has the authority to convey. If application is made to FHWA and they concur in the need for the transfer and the project is federally funded, the land owning agency will be notified by FHWA and a right of entry requested. The land owning agency will then have a four-month period in which to respond. After proper consents have been obtained, a deed is signed and recorded.

Procedures are as follows:

The MaineDOT, through the Title Office, may file an application with the FHWA.

Applications shall include the following information:

- (1) The purpose for which the lands are to be used;
- (2) The estate or interest in the land required for the project;
- (3) The Federal-aid project number or other appropriate references;
- (4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;
- (5) A map showing the survey of the lands to be acquired;
- (6) A legal description of the lands desired; and
- (7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The land-owning agency shall have a period of four months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the four-month reply period at the timely request of the land-owning agency for good cause.

(f) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the MaineDOT and certified by an attorney licensed within the State as being legally sufficient. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). After the MaineDOT prepares the deed, it will submit the proposed deed with the certification to the FHWA for review and execution.

(g) Following execution, the MaineDOT shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.

(h) When the need for the interest acquired under this subpart no longer exists, the MaineDOT must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.

Federal Land transfers are usually handled by the Title Office with information gathered from other units within the department. It should be noted as stated above that obtaining approvals from the federal level can take 4-6 months to accomplish. This should be factored into the right of way project schedule when this type of situation occurs.

### **5-1.07 Estates Acquired**

Typically, MaineDOT purchases full fee title (the full bundle of rights) to property that is needed for the traveled way and other permanent highway features. However, in many instances, an easement conferring specific and limited control over the property is sufficient for the construction and maintenance of the highway project. MaineDOT may use any of its standard forms of easements to purchase only the rights needed for the highway facility. Following are the most frequent types of property interests that are used by the Department:

1. Fee Simple Absolute, or Fee. This estate represents the acquisition of all right title and interest in a property.
2. Easement for Highway Purposes. This estate represents acquisition of nearly the same rights as fee simple absolute, except that the abutting owner retains the underlying fee interest, or a right of reversion if the easement is extinguished.
3. Slope Easement. This easement is used to ensure and maintain the integrity of embankments that are adjacent to the highway project site.
4. Drainage Easement. This easement protects and maintains drainage facilities that were constructed to serve the site's drainage requirements.
5. Inlet and Outlet Ditch Easement. This easement is used to accommodate water flowages into and out of drainage areas.
6. Temporary Construction Right. This interest provides for the temporary use of property that is needed during the construction period (e.g., work areas, equipment maneuvering). The rights obtained expire on the Projex X49 "Construction Complete" milestone date.

7. Grading Rights. Rights that provide for matching the topography of abutting properties in with the new construction and are usually for the benefit of the parcel. These rights are not necessary for the completion of the project.
8. Wrought Portion or Prescriptive Easement. This interest is claimed after open and notorious use for over 20 years where no record of any ownership rights can be found. Wrought portion is typically claimed for traveled ways, shoulders, drainage side and back slopes and other supporting structures.

The purpose of maintaining a diverse range of easements is to custom match the property rights acquired to the specific needs of the project. The Department is authorized to acquire only land and rights in land that are needed for the highway facility, allowing the least intrusion on continued private use and ownership.

## **5-2 ACQUISITION FORMS AND REPORTS**

### **5-2.01 Building the Acquisition File**

The Acquisition File serves as a permanent record of all contacts with property owners. It includes, but is not limited to:

1. Completed parcel related forms,
2. Parcel related correspondence,
3. Summaries of discussions with the owner,
4. Pertinent information about the project or schedule,
5. Counteroffers,
6. Proposals for the retention of items,
7. Real/personal property determinations, and
8. Any other useful data obtained from the owner.

The file content is an informational data source to the negotiating agent and any person who is subsequently assigned to work on the case. It is also necessary to present a full record of the case to document claims, for audit purposes, and to support State Claims Commission proceedings.

Forms used as part of the record may be augmented, as necessary with approval of the Chief Property Officer, to meet specific circumstances or needs that may be unique to the particular property acquisition at hand.

Arrange the file in **chronological order** with the initial actions, applicable data, owner contacts, etc. and place them in the file in the sequence in which they occurred. Good file maintenance practices should be applied. Distinguish the original documents from duplicates. Also, cull unnecessary papers from the file before it is closed and placed in permanent storage.

### **5-2.02 Scanning Documents into the Department's Electronic Record Management System**

It is important to note the right of way records relating to right of way appraisal and negotiations are confidential under Maine Law. Further, relocation assistance requirements mandate that some displacees provide copies of sensitive personal financial documents in order to qualify for relocation benefits. The confidentiality of these documents needs to be carefully considered and protected prior to scanning them into Department's Electronic Record Management System.

### **5-2.03 Description and Special Instruction on Important Acquisition Forms and Reports**

An important purpose of the acquisition forms that are included in the parcel file is to insure that all information that the Department is legally required to provide to property owners is properly

presented. In addition to the forms, it is important to provide a checklist of items that should be discussed personally with the property owner. Certain forms are for internal administrative and reporting purposes. The right of way agent should realize that information on pre-designed forms cannot anticipate the wide variety of acquisition situations that will be encountered. If certain important information is not addressed in the forms, or if information items called for in the forms does not seem relevant, consult with the Senior or Chief Property Officer.

On all forms, mark the lines that are not applicable to the parcel or situation "N/A."

The following discusses the forms that are most frequently used in the acquisition process:

1. Offer Letter (Forms AQ-1 and AQ-2). The Offer Letter includes information describing the taking and the property rights to be acquired. It also includes entries for a breakdown of the total value to the elements necessary for the owner to make an informed decision. A total taking of land requires only that the highest and best use and fair market value be stated. A partial taking, however, requires additional information to be provided, including highest and best use after the taking, fair market value of the part taken, severance damage to the remainder (if any), special benefits when applicable, and a statement of net damage allocating values to each of those items. These forms are consistent with the requirements of **23 MRSA 154**
2. Owner's Offer – Assent (Form AQ-15). In completing and signing this form, the owner agrees that the State acquires the land, including buildings as identified in the right of way map, through eminent domain. It also states the amount of compensation and the projected date of the vacation and removal of the buildings or other improvements, where applicable. This form does not transfer ownership of any land or rights in land to MaineDOT. Its intent is to release the property owner's right to appeal the damage award.
3. Initiation of Negotiations Statement. Federal Regulations require owners be given a reasonable time to consider the offer and respond with any information they may have prior to the filing of the condemnation notice. Reasonable time has been determined to be a **minimum** of 4 weeks. The Negotiator will complete an Initiation of Negotiations Statement specifying the date of completion of initiation of negotiations with all owners on a project. The completion date on the statement is the beginning date of the owner's opportunity to consider the offer and respond. In cases where whole parcels are acquired, the appraisal problem is complex or the acquisition is contentious, additional time should be allowed for the owner to respond. See Section 5-3.02(f) and 49 CFR 24.102(f) Basic Negotiation (Appendix)
4. Negotiator's Contact Sheet (Form AQ-14). This is the complete and cumulative record of negotiations contacts with the owner or a representative. Each time there is a contact with the property owner, the Negotiator should complete a Contact Report specifying what was discussed, any forms or other information presented to the owner, and conclusions reached during the contact. It is important to document the record to insure that future contacts address any outstanding issues or questions in an effort to reach an amicable settlement for the acquired property. Negotiator should also document internal MaineDOT discussions in the contact forms. It should

be noted that checkbox forms are not acceptable. Complete narrative reports of each contact are necessary to adequately document the parcel file for future reference.

5. Waiver Offer Settlement Agreement (Form AQ-8). This Agreement Form accompanies the Department's Waiver Valuation Procedure for non-complex acquisitions less than \$15,000. It is important that the owner understand the process and, in particular, that the valuation does not arise from an appraisal of the property. The Negotiator should carefully explain the estimate of just compensation to the owner. For projects greater than \$10,000 the negotiator must be a separate person from who did the valuation. See Chapter 3 for policy on the Waiver Valuation Procedure.
6. Administrative Settlement Agreement (Form AQ-7). The Settlement Agreement, to be signed by the owner, releases MaineDOT from all claims, demands or causes of action as a result of the project construction. It includes the amount paid at condemnation and any additional amounts included as part of the settlement. The Negotiator should document in the file all actions and conclusions reached in discussions with the owner to support the Agreement.
7. After Condemnation Settlement Agreement (Form AQ-9). After date of condemnation and receipt of the compensation check, the owner will be asked to sign the version of the form indicating that either (1) the amount of the check received in payment for rights taken by condemnation is acceptable or (2) the amount is not acceptable and the Department is requested to refer the matter to the State Claims Commission.
8. Negotiator's Statement (Form AQ-6) This statement is completed and signed by the Negotiator after execution of a Settlement Agreement. The Negotiator certifies that he or she has no direct or indirect interest in the property, the agreement was obtained without coercion or threat, the agreement is inclusive of all considerations agreed to by the owner, and it is understood that the rights were secured in connection with a Federal-aid highway project, if applicable.
9. Right of Way Certificate (Form AD-3). The certification is assurance that all requirements of law regarding the purchase of right of way and relocation that are prerequisite to construction have been completed. Detailed information is provided including the number of owners, parcels, replacement housing payments to owners and tenants, and moving costs for all residential, farm or business properties. This form is necessary for the project construction authorization. This form is an essential part of the Project Record. See Chapter One, Section 2.02(b) for a complete discussion of the Right of Way Certificate.
10. Negotiator's Certificate (Form AQ-5). After receiving the project assignment the Negotiator will sign and date a certification stating that the Negotiator has no present or future financial interest in any of the properties assigned for negotiation on the project nor are any of the property owners related in any way.

11. Status Report. Thirty days after condemnation the assigned agent will prepare a status report outlining the settlement status of each parcel to include any special agreements or other requests that have been made by the owner to the Department. Copies of this report will be sent to the project file, negotiator file, the Right of Way Support Manager and the Project Resident.
12. Status Report to Legal. Sixty days after condemnation the Negotiator will complete a status report for transmittal to the MaineDOT Legal Division outlining the status of all unsettled parcels on the project. Included in the report should be any special agreements or requests proposed by the Department.
13. Work Permit or Rights of Entry (Form AQ-4) Temporary rights are generally needed to insure proper grading between the construction project and adjacent properties. It would include rights for excavating, placement of fill, loaming, seeding and other incidental work. The usual method for obtaining the necessary rights is by agreement with the owner through a work permit. The owner's signature on the work permit does transfer the temporary right to the MaineDOT. The use of work permits on Emergency Relief (ER) projects will be coordinated with FHWA.
14. Option (Form AQ-11). The Option Form to be signed by the owner grants the Department a right of entry to the owner's property to perform project related construction. It also grants the Department an option to purchase the property needed within a specified time period for an amount included in the option agreement.

### 5-3 DIRECT NEGOTIATIONS

#### 5-3.01 Preparation for Negotiations

##### 5-3.01(a) Assignment

Based on staff availability, type of project and complexity of acquisitions, the Senior Property Officer assigns Right of Way negotiators to the Project Teams to insure the timely delivery of right of way for project construction. Each agent or Negotiator is responsible for performing the acquisition elements of the individual parcels assigned in conformity to the procedures set forth in this *Manual*.

Prior to starting negotiation activities, the Senior Property Officer will confirm “NEPA Complete” and that authorization for negotiation and acquisition has been obtained. In the Projex database, authorization for negotiation will be represented by a date in the Right of Way Negotiation/Acquisition field, found in the Status/Authorization section under the Description heading. If date information is missing, then the Senior Property Officer should notify both the Project Manager and the Property Office to resolve the authorization issues prior to initiating negotiations.

Upon assignment, the Negotiator should initially make a thorough review of the parcels to be acquired, noting the complexity and special circumstances that are involved. The Negotiator should estimate the lead-time necessary to complete the acquisition process for each of the parcels. At this time, the sequencing and priority of parcel acquisition should be decided to insure that early action is taken for those acquisitions that may require an extended negotiation process or where there are relocations involved. A sequential order can then be established for the initial contact with each of the property owners, allowing as much time as practical to finalize the acquisition and secure the necessary rights by the scheduled project construction date.

##### 5-3.01(b) Acquisition File Documents

Many of the acquisition file documents are now included in the MaineDOT Realty Management System Database (RMS). These documents are designed to self populate, based on data that was previously entered into the system by traditional data entry. It is important that the negotiator use these documents and keep subsequent files, contact summaries, etc. in RMS up to date. It is the responsibility of the Senior Property Officer to insure work completed by a consultant negotiator is properly entered in the system.

The **Negotiator will reconfirm** that the **second phase right of way authorizations** are approved and then assemble and insure that the following documents are present in the Acquisition file:

1. Parcel plan showing the acquisition as it relates to the whole property;
2. Project right of way plan and profile sheets;
3. Aerial Photography, if available.
4. Appraisal Report or Waiver Valuation Worksheet;

5. Review Appraiser's determination of value, if appropriate;
6. Statement of just compensation;
7. Agreement forms;
8. Waiver Valuation Offer Settlement Agreement, if applicable;
9. Owner Contact Report Forms;
10. The Negotiator's Certificate; and
11. Memorandums relating to the individual parcel and copies of previous correspondence that was sent to or received from the owner.

The Negotiator is responsible for insuring that the parcel file is complete and that all of the previously noted correspondence, agreements and other documents are present. In addition, the Negotiator will review the content of all documents to insure that there are no errors, omissions or contradictory statements. This review is a basic QA action that is an essential step in the process.

#### **5-3.01(c) Preparation for Initial Owner Meeting**

The greatest influence on whether a successful settlement is reached is the Negotiator's extent and quality of preparation. A prepared, knowledgeable Negotiator projects a sense of confidence, encourages trust of the owner, and reflects that the Department has thoroughly and fairly considered all the effects of the project on the property.

Initially, the Negotiator should become completely familiar with the project and determine why the project is needed, what the anticipated benefits to the community will be and, most importantly, a thorough understanding of the impact on each of the affected property owners. The Negotiator will learn from experience that certain questions can be anticipated and should be addressed before contact with the owner. The Negotiator should consult with other members of the Project Team to clarify elements as they affect specific properties (e.g., slopes, driveways, drainage, tree removals or replacements, project landscaping).

The Negotiator should be able to explain the valuation process, and in particular, the appraisal process, if it is the basis for the value determination. The owner should be convinced by the Negotiator's presentation that the value of the property rights acquired are fairly determined and are based on properly analyzed market information. If there are damages to the remainder in the after condition, they should be known by the Negotiator. If a partial acquisition is not assigned damages to the remainder, the Negotiator should be able to explain why the property does not suffer economically in the after condition. If necessary, the Negotiator should consult with the Review Appraiser or the Appraiser to explain aspects of the value that the owner may be expected to ask about. The Negotiator should be able to explain the value to the owner, as well as the process by which it was established.

The Negotiator should view the property to be acquired before meeting with the owner. Selectively, and depending on circumstance, the primary comparable sales relied on by the Appraiser in determining the property value should be viewed. This will further support the Negotiator's knowledge and confidence in the fairness of value and provide a basis for an informed discussion with the owner.

Finally, prior to scheduling the initial contact with the owner, the Negotiator should become familiar with the facts of the present ownership (e.g., who are the fee owners, what are the ownership interests, what are the names of all parties of interest and the proper pronunciation of those names).

### **5-3.02 Initial Negotiations**

#### **5-3.02(a) The Negotiations Environment**

The initial offer meeting is the most important contact the Negotiator will have with the owner. It is essential, therefore, that the tone of the first meeting be one that conveys a thoroughly professional demeanor, with the Negotiator displaying an understanding of the project, the property to be acquired, the effect of that acquisition on any remaining property, and the valuation process.

The Negotiator should focus on establishing a positive business relationship with the owner (or representative of the owner). The meeting should be arranged at a time and place that are convenient to the owner and supportive of serious business interchange. The Negotiator should not hesitate to suggest that distractions be minimized (e.g., suggesting that the sound on a television be muted).

A property owner who is elderly, or who has a disability, should be accommodated in any way that is reasonable. For example, an older owner may welcome a suggestion that a relative or trusted friend be present at the initial offer meeting. However, the Negotiator should avoid meeting the owner with a group of people who do not have any interest in the property.

If an owner exclusively speaks a language other than English, and the Negotiator cannot communicate in that language, arrange for interpretation services.

The order and pace of the first meeting are entirely within the professional judgment of the Negotiator. There can be a plan developed for the meeting, but the Negotiator should remain flexible and respond to the needs or concerns of the owner. During early discussion, there may be a sense that the Negotiator's planned order of discussion is causing some tension or discomfort to the property owner. For example, an owner may be so anxious to know the dollar amount of the offer that he or she finds it difficult to concentrate on the preliminary information about the project and its effect on the property. At that point, it may be wise to make the offer, allow time for the owner to contemplate the amount, and then proceed in presenting the information that is important to the owner's understanding of the acquisition and the offered amount.

#### **5-3.02(b) Coercive Actions Prohibited**

The Negotiator will not take any coercive actions to compel a property owner to agree to the offer for property to be acquired. This includes deferring timing of negotiations or condemnation, or advancing condemnation. The Negotiator will not provoke or sustain heated arguments, or attempting to intimidate an owner. An example of intimidation would be to state

“All your neighbors have settled, why are you being unreasonable?” If the level of tension at a meeting rises to the point that further discussion would not be effective, the Negotiator should end the meeting as gracefully as possible, while attempting to preserve the opportunity to resume discussion at an other time.

### **5-3.02(c) Discussion of Project, Acquisition and Process**

The Negotiator should use the plan of meeting that was previously developed, but allow enough flexibility to react to any questions or concerns of the owner as the meeting proceeds. The nature and scope of the project should be explained using terms that are easily understandable to the typical layperson. The use of project and parcel plans along with other visual aids can enhance the owner’s understanding of the project. The Negotiator may refer to a nearby location that has a condition similar to how the subject property will appear after the project. This might be a similar driveway treatment or degree of slope in the front yard.

The owner's familiarity with the project may be limited or quite extensive, depending on the extent of early involvement during the environmental or public hearing process. In either case, a review of the nature and scope of the project, including the benefits to the community and impacts on the remaining property as a result of the acquisition, may be beneficial at this time. On the other hand, these basic elements may be read as simplistic and time-wasting “window dressing” to an owner. The Negotiator must read the reactions and temperament of the owner and adjust accordingly.

If the Negotiator at any time during a meeting encounters an excessively hostile atmosphere or feels menaced or threatened, immediately terminate the negotiations. The Negotiator’s personal judgment will be the guide to determining whether a meeting should be ended. The events should be immediately reported to the Senior Property Officer, who will determine what further action will be taken.

An explanation of the project activities, such as the time that MaineDOT will require possession and information on the construction schedule including anticipated completion date, can help alleviate pre-existing concerns.

The Negotiator should explain that MaineDOT generally acquires the property through the exercise of eminent domain, which provides the State with clear title to the property. This does not restrict the owner's right to contest just compensation. The process for resolving a compensation issue should be explained. The Negotiator should describe the role of the State Claims Commission as a fair, impartial and informal means for owner views on compensation to be heard.

### **5-3.02(d) Project Presentation Outline**

The Negotiator should also explain construction details and their effect on the owner’s property. The presentation should provide a full parcel specific explanation of the acquisition, to include:

- Project Purpose and Need.
  - Project termini
  - Typical section

- Schedule
  - Public process
- Specific Property Impacts
  - Typical Section in front of property
  - Horizontal and Vertical centerline changes
  - Super elevations
  - Takes
    - Fee Simple, including a definition of the term,
    - Easements, including a definition of the terms,
    - Rights, including a definition of the term.
    - Drainage
    - Personal Property including a definition of the term
  - Improvements within the Taking Trees, shrubs, pavement, lawn etc.
  - Drive grades before and after

The transfer of property rights by deed should be discussed to the extent it is applicable to the acquisition situation.

The owner should be further advised of the protections provided by Federal and State law and regulations, including that payment of determined compensation will be made to the owner before MaineDOT requires possession, and the right to challenge compensation before the State Claims Commission and to the State Courts. If the acquisition causes displacement from a home or business location, there are benefits, rights and protections that apply. See Chapter 6 for relocation requirements.

### **5-3.02(e) Notification of Potential Buyers**

The Negotiator will advise the owner of responsibility under **23 MRSA 153-B4**. This provides that if an owner decides to sell the property after the owner is notified that the Department intends to purchase or acquire the property by eminent domain, the owner must inform the potential buyer of the Department's intent.

### **5-3.02(f) Presentation of Offer**

Presentation of the offer, in writing, represents the ***Initiation of Negotiations***. Initiation of Negotiations is a regulatory phrase and represents an important milestone in the acquisition process. This milestone serves as the beginning of the minimum 28 day offer consideration period and also serves as the date certain displacees become eligible for relocation benefits. Care should be taken on every parcel and item to document the date, time and place that the written offer was delivered and to whom it was delivered.

Item that should be discussed during the presentation of the offer are as follows:

- Offer and basis for offer
  - Amount and general description of the valuation process
  - Proposed Condemnation Date

- Payees included on the check, (Note only the owner is included on checks \$1000.00 or less.
  - Cash check without violating rights to negotiate or appeal
  - Relocation Benefits (If Applicable).
- Recourse
  - Negotiate
  - State Claims Commission
  - Superior Court
- Follow-up
  - Agent/Negotiator address. Phone and e-mail addresses
  - Commitment to follow up. It is the negotiators responsibility to follow up on mail negotiations and negotiate in good faith, not the owner's responsibility to follow up.

Request for phone number or e-mail if one is not available.

After the project is described, the effects on property are addressed, and other relevant information is provided to the owner, the Negotiator should present the amount of the compensation offer. The written Offer Letter (Form AQ-1) provides a description of the acquisition and a breakdown of value that separately states the value of the whole, each part acquired and damages to the remainder. There may be more than one taking from the property, and there may be different property rights acquired, reflecting easements that are needed. The basis of the values should be explained to the owner. A property owner may possess more than one larger parcel on a project. The owner should be presented a separate offer letter for each larger parcel acquisition. The Negotiator should inform the owner that the check may include as payees any individual or entity who has a recorded interest in the property (i.e. mortgage, tax lien). Additionally, the owner should understand that they can cash the check without indicating acceptance or affecting their rights of appeal.

Owner reactions to the offer will vary widely. Some may express a willingness to settle for the offered amount without hesitation. Others may object to the acquisition and the offer and possibly not state a reason for their dissatisfaction. A negative reaction would not necessarily be an unalterable one. The owner may need time to consider the offer, or may wish to consult with family or advisors privately. It is important for the Negotiator to keep the lines of communication open and actively listen to the owner and not presume to know his or her concerns or what questions he or she may have. Some questions that are presented may not be immediately answerable, and it is proper to defer an answer until the question can be thoroughly researched.

### **5-3.02(g) Reasonable Time to Consider Offer**

Federal regulations (49 CFR Part 24.102 (f)) require that the owner shall be given reasonable opportunity to consider the offer and present materials which the owner believes are relevant to that value of the property, and to suggest modifications to the purchase price. Any objections from the owner shall be seriously and carefully received, documented and considered. The owner may present information pertaining to value or ownership that was not previously known which might affect the value. If the appraisal omitted certain features (e.g., special landscaping, outbuildings) or if the remainder will suffer an element of damage that is not reported in the appraisal, MaineDOT will appropriately revise the offer amount. To insure that the owner is

provided **reasonable time to respond**, the Department will not file a condemnation until **at least** four weeks have elapsed from the date the owner receives the State's written offer. It should be noted that cases will exist where four weeks **does not represent an adequate time frame**. In these cases additional time should be allotted in the project schedule to insure owner's have adequate time to respond. The negotiator is expected to make every effort to follow-up with unsettled owners prior to the condemnation to insure the owner has every opportunity to consider and respond to the offer of just compensation. In cases where negotiations are initiated by mail, the owner will be given a minimum of four weeks from the receipt date evidenced by the postal return receipt "green card"

#### **5-3.02(h) Objections and Counteroffers**

The owner may express objections during the course of discussion of the acquisition and the offer of just compensation. The owner may view the whole situation as a complete disturbance of an otherwise orderly and settled lifestyle. These feelings should be acknowledged in a non-defensive manner without rebuttal. Further discussion may reduce tension, or may heighten it. The Negotiator must decide whether it is productive to continue the meeting. If not, the Negotiator should close the meeting while attempting to preserve a businesslike relationship that may be resumed more productively in future contacts.

The owner may present a counteroffer to the Department's offer of just compensation. Once a counteroffer is made, the Negotiator should ask the owner to explain the basis for the counteroffer and proceed to explore the owner's reasoning for the increased amount. The Negotiator should use their best judgment in approving or disapproving counteroffers within the range of their authority. This information should be noted and reported to the Senior Property Officer with a recommendation. The counteroffer may be based on relevant value factors that were not previously considered, in which case a revision in the just compensation offer will be made. Also, if an administrative settlement is warranted, these factors may contribute to the support of a settlement.

#### **5-3.02(i) Owner Requests and Proposals**

The owner may present additional proposals for consideration by the Department. For example, requests for changes in construction or design features that could be made to moderate the impacts of the project on the property. Other minor elements may include requests to harvest existing crops, the retention of shrubbery and household appliances not considered personal property. Additional costs incurred by the Department in construction concessions to the owner can be used as incentives for reaching settlements. Transmit these requests to the Senior Property Officer and/or Project Manager for consideration.

#### **5-3.02(j) Initiation of Negotiations Statement.**

When the negotiator has made contact with all impacted owners on a project and all offers have been presented, the Negotiator will complete an Initiation of Negotiations Statement, certifying that all offers have been received.

**5-3.03 Follow-up Contacts****5-3.03(a) Scheduling**

After the initial contact with each owner on the project, the Negotiator will assess the status of unsettled parcels to determine the extent of follow-up action considered necessary. Circumstances of each case will guide the Negotiator in making decisions on the number of contacts both prior to and subsequent to the date of actual condemnation.

Immediately after condemnation, the Negotiator will send an email to the project file stating RMS has been updated pertaining to settlement status of each parcel and any special agreements or requests that have been proposed to the Department. This information will be made available the review appraiser, the Project Resident and the Senior Property Officer. This information will serve as a guide for the Negotiator to follow up with the Project Resident after the project construction has begun to discuss specific items relating to abutting property owners' special settlement specifications or other appropriate items that may have been agreed to. This information is also relied upon as a flag to update the appraisals on all unsettled parcels.

A standard number of contacts are not specified, and scheduling follow-up discussions will be based on the professional judgment of the Negotiator. At least one follow-up contact should be made with each unsettled owner prior to condemnation. The primary objective is to reach an amicable settlement with the owner and discussions should continue to achieve that objective.

Schedule subsequent contacts with unsettled parcel owners to the extent that will be productive in reaching a settlement. Opportune times for contact include, but are not limited to, the time between initial contact and the date of condemnation, termination of the 60-day referral period, completion of project construction and just prior to scheduling for State Claims Commission hearing.

Sixty days after condemnation, the Negotiator will write a status report to the MaineDOT Legal Division concerning the status of all unsettled parcels on the project and any special agreements or requests that have been proposed to the Department.

**5-3.03(b) State's Offer Accepted**

If MaineDOT's offer is accepted, the owner will be requested to execute the appropriate settlement agreement. This affirms acceptance of a proposed settlement amount and releases the State of Maine from any further claim or causes of action arising from the acquisition of real property. The Negotiator will advise the owner of the date of possession by MaineDOT, which will be in compliance with notices required according to the status of the occupancy and whether there will be displacement from a home or business. Also, an owner is not required to surrender possession of the property until the State pays the agreed purchase price.

**5-3.03(c) Terminating Negotiations**

A reasonable and sufficient number of meetings or phone contacts should be made as determined by the Negotiator. At some point, it may be apparent that there are irresolvable differences that prevent an amicable settlement of compensation. This decision should be made early in the negotiation process based on clear statement by the owner that no further contact or discussion is desired. Other circumstances that call for immediate termination of further contact include:

1. The Negotiator being menaced,
2. The owner's attorney refusing further contact,
3. The owner becoming incapacitated, and
4. The owner's whereabouts are unknown.

Referral to the State Claims Commission is appropriate at this time; however, negotiations may be resumed at the owner's initiative.

## **5-4 NEGOTIATIONS BY MAIL**

### **5-4.01 Circumstances for Use**

It is the Department's policy to make personal contact with property owners to deliver the acquisition offer whenever practical. However, circumstances may prevent personal contact or may cause unreasonable delay in delivering the offer. Following are conditions in which an offer may be delivered by mail:

1. The owner resides out of State.
2. The owner refuses personal contact.
3. The whereabouts of the owner cannot be determined.
4. The owner is represented by an attorney who requests offer delivery by mail.
5. Following up on initial offers where appropriate.

If the owner is a minor, is incarcerated, or has been adjudicated not competent, the file should be referred to the State Claims Commission for an appointment of a guardian ad litem to protect the owner's interests and rights. All further correspondence will be with the guardian.

Other situations may also warrant delivery of the offer by mail as decided by the Property Office Director or the Senior Property Officer.

### **5-4.02 Procedure**

The acquisition documents are sent with an explanatory cover letter to the owner's address by certified mail with return receipt requested. The contact packets should include, at a minimum, a section of the right of way plan relating the project to the property, a plan or sketch of the property, the Offer Letter (Form AQ-1), Offer Assent Forms (Form AQ-15), a stamped return envelope, and the MaineDOT right of way brochure "A Land Owner's Guide to the Property Acquisition Process." The cover letter should provide a full parcel specific explanation of the acquisition, to include:

- Project Purpose and Need.
  - Project termini
  - Typical section
  - Schedule
  - Public process
- Specific Property Impacts
  - Typical Section in front of property
  - Horizontal and Vertical centerline changes
  - Super elevations
  - Takes
    - Fee
    - Easement
    - Rights
    - Drainage
  - Improvements within the Taking Trees, shrubs, pavement, lawn etc.

- Drive grades before and after
- Offer and basis for offer
  - Amount and general description of the process
  - Condemnation Date
  - Payees on check
  - Cash check without violating rights to negotiate or appeal
- Recourse
  - Negotiate
  - State Claims Commission
  - Superior Court
- Follow-up
  - Agent/Negotiator address. Phone and e-mail addresses
  - Promise to follow up. It is the negotiators responsibility to follow up on mail negotiations and negotiate in good faith, not the owner's responsibility to follow up.

Request for phone number or e-mail if one is not available.

If the owner's address is not known, or if the initial mailing is returned undelivered, the Negotiator will consult with the Senior Property Officer to determine the correct constructive delivery of the offer by posting the property or by publishing an advertisement.

The negotiation by mail procedure is only effective if it is clear and convenient to the owner to respond. It is required that the Negotiator makes a follow-up phone call within 2 weeks of delivery of the offer package. This will confirm that the owner understands the offer and other information (e.g., the owner's rights, options, and the effect of the acquisition on remaining property). If there is any doubt about the owner understands, or if the owner so requests, arrange for a personal visit unless it is not physically or economically practical.

## **5-5 STATE CLAIMS COMMISSION**

### **5-5.01 Role and Composition of the Commission**

The State Claims Commission established under 23 **MRSA** Section 151 and 152, is an independent, impartial board composed of persons who are knowledgeable in the determination of fair market value for condemnation. The Commission is composed of 5 members appointed by the Governor, 2 of whom must be qualified Appraisers and 2 of whom are Attorneys. One of the Attorneys is designated to be Chair by the Governor. The 5th member of the Commission is a member of the Board of County Commissioners of the County in which the property is located, and is appointed for each hearing or series of hearings.

### **5-5.02 Referrals to the Commission**

The State Claims Commission operates under 23 **MRSA** Section 156, wherein the Chairman of the Board, after receiving a petition for hearing from either the Department or the owner, assigns a date for a hearing. The Chair then assigns no more than 3 members of the Board to hear the appeal, one of which is an Appraiser and one an Attorney. Notice of the time and place of the hearing is mailed by registered or certified mail to all parties of interest at least 14 days before the hearing date.

Before holding a hearing, the State Claims Commission views the property involved. The interested parties are notified of the viewing and can be present if they so desire.

The Department is represented at the hearing and may present data related to title, engineering, appraisal evidence and opinion as to the fair market value of the property. A property owner may either represent themselves or employ counsel. In making an award, the Commission is not limited by the range of testimony presented, but may reach a decision based on the viewing, testimony and its own judgment.

As soon as practical after the hearing has concluded, the Commission will make an award in writing, specifying the following:

1. The owners and encumbrances,
2. The nature of the interest taken,
3. The commission's decision on elements of damage,
4. Gross damage,
5. Net amount of award,
6. Interest on the award,
7. Award of just compensation, and
8. Withholding for any advance payment for relocation replacement housing

**5-5.03 Cooperation with State Claims Commission**

The Department is responsible for referring unsettled parcels to the Commission 60 days after the date of condemnation. At time of referral, all parcel file information will be reviewed to insure that it is complete and accurate for the Commission's review and hearing action. The designated Negotiator should be available to respond to any questions or request for information that the Commission may have. Appropriate personnel must be available at the time of the hearing to provide evidence relative to title, engineering, appraisal or other necessary information for the property involved.

**5-5.04 State Claims Commission Awards**

At the completion of a hearing, the Commission sends a copy of the award to the Department. The Department or any of the aggrieved parties has 30 days to file an appeal with the Superior Court. If no appeal is made within 30 days, the Department is so advised by the Commission and it is the Department's responsibility to then pay the awarded amount to the parties within 60 days of the issuance of that award by the Commission.

Parcel files will contain copies of Claims Commission awards and comments from those involved in the case relative to the decision relating to appealing the award.

## **5-6 ACQUISITION REVIEW COMMITTEE**

Parcels on which compensation remains unsettled 60 days after condemnation will be administratively reviewed before referral to the State Claims Commission. Additionally, parcels whose owners have presented counter-offers significantly above traditional guidelines will be reviewed on an as needed basis. Each parcel is reviewed to assure that all relevant materials are in the file and that it is ready for presentation before the State Claims Commission. The review will also determine whether there is a basis for an increased offer amount, which will be a final offer of settlement to the owner. The Administrative Settlement process recognizes that there are reasonable differences in judgment as to value of real property, and appraisals are an expert opinion value, but do not represent fixed and unalterable judgments. The Committee will determine if an administrative settlement is reasonable, prudent and in the public interest. If so, the Committee will provide a written justification in support of the settlement. The written justification will state all relevant facts and circumstances considered by the Committee in arriving at a final offer, including trial risks. Appraisers and review appraisers will not be pressured to adjust their estimate of value to justify such settlements, as this would invalidate the appraisal process.

### **5-6.01 The Acquisition Review Committee Composition and Responsibilities**

The Acquisition Review Committee is a committee emanating out of the Property Office, chaired by the Chief Property Officer, that consists of the Senior Property Officers from the Highway and Bridge Programs as appropriate, along with the Property Office Director, and a Principal Real Estate Attorney from the Legal Services Office. Meetings will be chaired by the Chief Property Officer. The Committee will meet as often as workload requires. Meeting minutes will be kept that record the date, time and place of meeting and names of resource persons present, and the decisions reached.

The Acquisition Review Committee is a government decision panel discussing matters relating to the appraisal and negotiation for real estate purchases and meetings are not open to public attendance. The Committee may call on any persons to provide factual information or expert opinion. Positions that may be called by the Committee include: Project Manager, Mapper, Appraiser, Review Appraiser, Negotiator, Relocation Specialist, Chief Surveyor, Senior Property Officer or Real Estate Attorney.

### **5-6.02 Committee Procedures**

The Committee Chair will prepare an agenda and send a notice of meeting via e-mail to Committee members. The cases are considered individually in committee session. Parcels that are presented for administrative settlement are reviewed and recommended for increased offer based on the facts of each parcel acquisition.

The Committee has broad latitude in deciding the basis for an increased offer, and is not restricted to valuation issues. Considerations may include risk of the State to a high court award, cost to the State in advancing cases through the State Claims Commission and courts,

equity with settlements made with other property owners, substantial market changes between the time of valuation and condemnation.

Only parcels that are included in the agenda will be acted on at the meeting. Each Committee member will come prepared to discuss knowledge of the parcel and bring relevant material (e.g., files and plans) to aid in the discussion. Staff, who are familiar with the case, including the Appraiser and the Negotiator, may be asked their views and recommendations in person or by submission of a memorandum.

The Committee will reach decisions by consensus. According to the provisions of Administrative Policy Memorandum No. 10, the Director, Bureau of Project Development, will approve settlement amounts greater than \$150,000. An increased offer amount will be a final MaineDOT offer prior to referral to the State Claims Commission.

The Committee Secretary, appointed by the Chairperson, is responsible for insuring that all records of the Committee meetings are adequately documented in the Committee files. The records of the Committee are subject to confidentiality provisions of 23 **MRSA** 63. Records are open to public inspection after 9 months following the completion date of the project, or for claims appealed to the Superior Court, records will be open for public inspection following award of the Court.

## **5-7 ADVANCE AND EARLY ACQUISITION**

### **5-7.01 Advance Acquisition Defined**

Advance acquisition is the purchase of property needed for an identified highway project in advance of the completion of the environmental review process. Advance acquisition is used under limited circumstances to alleviate a hardship to the owners (hardship acquisition), or to preclude imminent development of the property (protective purchase).

### **5-7.02 Advance Acquisition – Criteria for Use and Approval Authority**

The following criteria are applicable to both hardship and protective purchase advance acquisition:

1. Advance acquisition may only be used for one or a limited number of parcels on a project.
2. The project must be included in the current approved State Transportation Improvement Plan.
3. The preliminary alignment for the project must be established. Preliminary alignment is defined as the date in Projex's "Actual Date" field for the X11 milestone, "Preliminary Alignment Complete".
4. The proposed advanced acquisition of the property must be strictly for highway purposes and needs.
5. If the proposed advanced acquisition is of a business or commercial operation, such operation must cease its business functions/operations prior to acquisition by the Department subject only to the following exceptions:
  - a. The owner of a business or commercial operation who has purchased property for a new location and has entered into binding contracts for the construction of a new facility with a firm completion date may negotiate with the Department to remain on the acquired property under an Occupancy Agreement with terms acceptable to the Department for a specified period of time pending completion of the new facility; and,
  - b. The owner of a business or commercial operation who has entered into a binding purchase and sale agreement for a new business location conditioned upon the early acquisition of his existing business by the Department may negotiate with the Department to remain on the acquired property under an Occupancy Agreement with terms acceptable to the Department for a predetermined period of time necessary for the owner to close the purchase of the new business location and move inventory, equipment and other business property from the acquired property to the new location.
6. The advanced acquisition must be submitted by the Project Team to the so-called ARC committee, which includes at least members of the legal staff, the Project Manager, ROW Relocation and Property Management.

7. The Department has complied with applicable public involvement requirements under 1 **MRSA** 406 and 23 **CFR** 450 and 771.111.
8. A determination has been completed for any property that is subject to the provisions of 23 **USC** 138 4(f) (property – parks and recreational areas).
9. Procedures of the Advisory Council on Historic Preservation are completed for properties subject to the rules of the Maine Historic Preservation Commission and 16 **USC** 470(f) (historic preservation).

The Director, Bureau of Project Development has approval authority for advance acquisitions. , Advance acquisition proposals shall be submitted to Federal Highway Administration for approval.

The Senior Property Officers of each program will maintain records for all advance acquisition proposals in the project and parcel files. Additionally, the acquired property should be maintained under normal property management procedures and, if time permits, a reasonable rental should be obtained on a short- or long-term basis depending on the time available between acquisition and the date of construction.

### **5-7.03 Hardship Acquisition Procedure**

Advance acquisition may be authorized when the owner of a property has a reasonable basis for claiming a hardship arising from a pending highway acquisition. When the State concurs with an owners request for a hardship acquisition, the State is not required to accelerate condemnation if an agreement cannot be reached with the property owner. If an agreement can't be reached then the State may defer acquisition of the property to the time it would normally occur in the schedule. The owner should be informed of this possibility when the request for hardship acquisition is accepted.

The Department may consider the following conditions as hardship circumstances:

1. Health/Safety Risks. Continued occupancy of a residence poses health or safety risks to the occupants For instance, a family member may be incapacitated and unable to use a bathroom on the second floor or a house may contain environmental risks such as lead base paint when there are children in the household.
2. Financial Hardship. The owner will suffer a financial loss due to an inability to sell the property when there is a valid need. For instance, a property owner may wish to take a job in another State and is unable to sell the house at a fair price because of market knowledge of pending highway acquisition.

In addition to the health, safety or financial hardship, the owner must also document an inability to sell the property for fair market value within a typical period of time. Some factors to consider include whether:

1. The property owner openly marketed the property through a realtor, a listing service or through other means.
2. The owner or realtor conducted a market analysis to determine a listing price disregarding any increase or decrease in value caused by the project.
3. The property has been on the market for an amount of time typical in the area and available for inspection by prospective buyers.

The Department will carefully consider all requests for hardship acquisition on their merits. A right of way agent who becomes aware of a situation that could fall within the hardship acquisition criteria is encouraged to bring the matter to the attention of the Senior Property Officer and the Property Office, for full review. It is appropriate for Property Office staff to assist an owner in preparing a written request for hardship acquisition.

When the State determines that a hardship exists and elects to proceed, the offer of just compensation must be based on an appraisal of the fair market value, and negotiations must proceed in good faith with sufficient information provided to the property owner for making an informed decision.

#### **5-7.04 Protective Purchase Procedure**

The Department may acquire a limited number of parcels in advance of general project acquisition if development of the property is imminent and would limit future transportation choices or increase project cost. The protective purchase authority may be used proactively, within overall criteria, to purchase key property that is known to be attractive for speculative commercial purchase. In this way, protective purchase may protect a proposed corridor from being excluded from consideration because of rising costs that may have been initiated by the project itself.

Potential protective purchase properties may be identified by Property Office personnel or other staff involved in early project development or by local planning or development authorities. The potential for development must be clearly demonstrated and the development must be imminent.

The Department will insure that the acquisition of property under either the protective buying or the hardship acquisition criteria would not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location.

#### **5-7.05 Early Acquisition**

#### **5-7.06 Early Acquisition Defined**

Early Acquisition is the acquisition of real property at any time the State has the legal authority to do so, based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

MaineDOT may acquire property with State funding before authorization by FHWA for right of way acquisition. The cost of this property may be credited to the non-Federal share of the federally funded project at the time of the project agreement, provided the acquisition complies with the following conditions:

1. The original project agreement covering the project was signed on or after June 9, 1998.
2. Property is acquired in compliance with Maine statutes.
3. The early acquisition must be associated with a project that is included in the 6-year plan.
4. The property proposed for early acquisition must be impacted by all reasonable potential alignments.
5. The proposed early acquisition of a property must be strictly for highway purposes and needs and incorporated into a Federal-Aid Project.
6. If the proposed early acquisition is of a business or commercial operation, such operation must cease its business functions/operations prior to acquisition by the Department subject only to the following exceptions:
  - a. The owner of a business or commercial operation who has purchased property for a new location and has entered into binding contracts for the construction of a new facility with a firm completion date may negotiate with the Department to remain on the acquired property under an Occupancy Agreement with terms acceptable to the Department for a specified period of time pending completion of the new facility; and,
  - b. The owner of a business or commercial operation who has entered into a binding purchase and sale agreement for a new business location conditioned upon the early acquisition of his existing business by the Department may negotiate with the Department to remain on the acquired property under an Occupancy Agreement with terms acceptable to the Department for a predetermined period of time necessary for the owner to close the purchase of the new business location and move inventory, equipment and other business property from the acquired property to the new location.
7. The early acquisition must be submitted by the Project Team to the ARC committee, which includes at least members of the legal staff, the Project Manager, ROW Relocation and Property Management.
8. The property is not from a public park, recreation area, wildlife and waterfowl refuge or a historic site of national, State or local significance (known as "4(f)" property).
9. Acquisition and related relocation is in compliance with the ***Uniform Relocation and Real Property Acquisition Policies Act of 1970*** (as amended) and 49 CFR Part 24.
10. Acquisition is in compliance with the requirements of Title VI of the ***Civil Rights Act*** of 1964.

11. The FHWA concurs with MaineDOT determination that the acquisition did not influence the environmental assessment for the project, including the need to construct the project or the project design or location.

The amount of the credit will be the cost of the early-acquired property unless Maine determines there has been a significant lapse of time, or increases in real estate values between the date of acquisition and the date of credit. If either of these conditions applies the amount of the credit may be the current fair market value at the time of the credit as supported by a real estate appraisal. The total credit to a project will not exceed Maine's pro rata share of total project cost.

The Federal rules applicable to early acquisition are at 23 **CFR** 710.501.

## **5-8 FUNCTIONAL REPLACEMENT OF PUBLIC-OWNED FACILITIES**

### **5-8.01 Purpose**

The Functional Replacement Program is designed to provide relief to public agencies when a highway project requires the acquisition of an essential public facility. This policy recognizes that the proper measure of compensation for essential facilities is their replacement cost rather than depreciated current fair market value. Payment of depreciated value for a public facility imposes the cost of replacement on the local or other owning agency, whereas the need to replace arises from the State- and Federal-funded highway project. The Functional Replacement Program refines the concept of just compensation so as not to burden the agency suffering the loss of facility or the citizens who fund that agency. Authority for functional replacement is in 23 **CFR** 710.509.

The property must be in public ownership and use, and the replacement must remain in public ownership and continue the public use of the facility being acquired. The facility may be Federal, State or locally owned. Facilities of volunteer fire departments are eligible if the real property is in public ownership. Some common types of facilities replaced include fire stations, schools and municipal buildings. State DOT maintenance facilities have been the most common type of replacement in Maine as well as in other States due to their location adjacent to the highway.

Functional replacement is an option for the owning agency. The acquiring agency informs the owning agency of its right to an estimate of just compensation based on the appraisal of fair market value and of the option to choose either just compensation or functional replacement. The agency may elect to be compensated on the basis of appraised fair market value.

It is important for the Department to identify practical functional replacement situations early in the project life to insure adequate time for initiating and completing the various required approvals and completing the construction of the replacement facility in sufficient time to meet the project construction date. The agency involved should be contacted by the Negotiator or other assigned acquisition agent to determine whether the facility will remain in existing use and whether agency management wishes to consider employing the functional replacement process.

The Senior Property Officer in each program will be the lead for administering functional replacement. Other Offices will have consultation and review responsibilities as determined for specific projects.

### **5-8.02 Procedures**

#### **5-8.02(a) Initial Meeting and Request**

At the time that a publicly owned facility is identified as being in the acquisition area of a proposed highway alignment, MaineDOT will meet with representatives of the owning agency to secure information and explore options. This meeting will:

1. Confirmation. Confirm that the facility is publicly owned. If the facility is leased, even on long-term approximating its economic life, it does not constitute ownership.
2. Applicability. Explore the need of the owning agency for continuance of use. If the facility is no longer serving an essential public purpose, it is not appropriate to replace it. Compensation will be on the basis of current fair market value. This would apply, for example, if an older fire station to be acquired overlapped the service area of an existing newer and larger fire station.
3. Purpose. Determine if the facility serves a unique and essential public purpose. Most public facilities are special purpose and uniquely serve the use for which they were constructed. However, if the facility can be replaced by purchasing an existing building on the open market, or if the use can be discontinued without harm to the public interest, functional replacement is not appropriate.
4. Compensation. Determine the intentions of the owning agency. The option of payment of monetary just compensation should be explored. Officials of the owning agency may prefer the flexibility of a monetary payment rather than replacement in kind.
5. Agreement. If functional replacement is appropriate and desired, MaineDOT and the owning agency will agree on the form and content of an agreement that will define the replacement and the responsibilities of the parties.

The owning agency must make a formal request that the facility be replaced as an alternative to a payment of monetary value (fair market value). This will include a presentation that the facility serves an essential public purpose that must be continued in the public interest. If functional replacement is approved by the Department, MaineDOT will review the request and must concur in the finding of essential public purpose.

The Department will make a formal determination that functional replacement is in the public interest. The determination will be forwarded for concurrence to FHWA if Federal participation in the cost of the functional replacement is anticipated (23 **CFR** 710.509b (5)).

#### **5-8.02(b) Betterments and Increases in Capacity**

The issues of betterments and increases in capacity should be fully explored with the owning agency. A replacement facility will not be an exact copy of what is acquired. It will be a structure that serves the same function (e.g., school, jail), but it will be constructed to current standards of construction and design. The replacement desired by the owning agency may serve a larger population or service area. Or, features may be included in design that improves quality, level of service or range of services. For instance, an acquired fire station may be replaced with a much larger building with community rooms for public functions, or the replacement function may be combined in a larger building that also includes a town hall. MaineDOT will not influence the type and extent of replacement except to limit reimbursement to that necessary to provide replacement utility that is equivalent to the facility that is acquired by MaineDOT.

MaineDOT will reimburse for betterments or increases in capacity that meet legal and regulatory standards for the type of facility being replaced. This is within the “equivalent utility” criteria. Significant features in a new building should be confirmed as standards by means as reference to buildings of a similar function that were recently constructed by other jurisdictions in the area. Other references would be standards that have been promulgated by national standard-setting organizations or provisions in State law or agency regulations providing minimum standards for the use and occupancy of public facilities.

MaineDOT and the owning agency will reach an agreement on responsibility for the costs of betterments and increases in capacity before committing to functional replacement.

#### **5-8.02(c) Agreement Between the Parties**

The agreed functional replacement terms, conditions, responsibilities and cost sharing will be set forth in an agreement between MaineDOT and the owning agency. The agreement will serve as the contract between the parties. All elements of the acquisition of the facility by MaineDOT and the replacement will be addressed in the agreement. The agreement will provide that the owning agency will keep auditable records of all costs.

#### **5-8.02(d) Replacement Site**

The owning agency will be reimbursed for the actual and reasonable cost of a suitable replacement site. If a pre-owned site is used by the agency, MaineDOT will pay the fair market value of the site acquired for the highway. Acquiring agencies need to be diligent in insuring that the owning agency does not receive a double payment by receiving compensation for both the displacement and replacement site.

#### **5-8.02(e) Review and Oversight**

MaineDOT will authorize the owning agency to incur costs and begin work. The contracting process of the owning agency may be used unless otherwise provided in the agreement.

MaineDOT will perform review and oversight on the replacement project, including the following elements:

1. Site selection and purchase,
2. Replacement facility plans and specifications,
3. Contract documents,
4. Progress inspections during construction, and
5. Final inspection at completion.

Each functional replacement situation is unique. The Director, Project Development Bureau, will assign responsibility for review and oversight of each functional replacement project in accord with the knowledge, skills and special resources required by the type of facility being replaced.

Other MaineDOT offices may be asked for advice and assistance in planning, coordinating and reviewing a project as circumstances warrant.

The Department will formally approve the completion of the project before making final payment to the owning agency.

## **5-9 SUPPLEMENTAL ACQUISITION ACTIVITIES**

### **5-9.01 Coordination with Legal Services Office**

The right of way function maintains an open line of communication on all levels with the Legal Services Office. Consultation is generally informal. This enables appropriate and timely right of way actions involving legal issues. When a formal opinion is needed, a request will be made in writing to the Chief Counsel through the Chief Property Officer.

The Senior Property Officers work with the Legal Services Office on the following activities:

1. Title certifications,
2. State Claims Commission activities,
3. Superior Court Appeals on compensation,
4. Closings - acquisition by deed,
5. Legal advice on acquisition compensability questions, and
6. Legal settlements after Superior Court filing.

### **5-9.02 Tenant-Owned Improvements**

Any improvements that are considered to be real property if they were owned by the landowner are also to be considered real property if they are owned by the tenant. MaineDOT will acquire the same interest in these improvements as if they were owned by the landowner.

The Property Owner Report will indicate whether a tenant is in occupancy on the property to be acquired. Any structures or improvements that are real property and that are owned by the tenant must be identified. A separate offer may be made by MaineDOT to acquire tenant-owned improvements provided the owner of the land disclaims interest in those property items.

A review of the property lease may, but not always, clarify property ownership issues.

It is accepted practice for commercial tenants to lease space that is essentially vacant or partially vacant and to build out or add to the interior to suit their particular needs. In these instances, unless otherwise precluded by the lease agreement, the tenant is entitled to payment for these improvements because the Department is required to acquire an equal interest in all buildings, structures or other improvements (23 *MRSA* Section 154-E).

On residential property, a tenant may own outbuildings (e.g., storage sheds) or above- or below-ground swimming pools. The Negotiator will inquire from the landowner as to the status of these items and make a separate offer to the tenant if the owner signs a statement disclaiming interest.

The basis for the amount of the offer for tenant-owned improvement is the higher of the contributory value of the items to the whole property or the value for removal, also known as

salvage value. The payment for an improvement may not result in the duplication of any compensation that was otherwise authorized by law.

Before payment can be made to a tenant for any improvements, its owner must assign, transfer and release to the Department all of their rights, title and interest in the property improvement. The Negotiator will draft a short release document and present it to the owner to sign. When the Negotiator is unable to obtain a release from the owner of the improvement, this fact should be noted in the parcel acquisition record. The parcel will be referred to the State Claims Commission for proper distribution of the parcel valuation. Both the owner and the tenant would have the right to challenge any decision by the Commission by filing a claim with the Superior Court for further adjudication.

### **5-9.03 Uneconomic Remnants**

An uneconomic remnant is a remaining part of a property in which the owner would be left with an interest that the Department has determined has little or no utility or value to the owner. MaineDOT will offer to acquire any remainder property that is determined to be an uneconomic remnant as required under 23 **MRSA** Section 154-C.

When the Negotiator becomes aware of a potential uneconomic remnant that was not previously identified, it should be brought to the attention of the Senior Property Officer for a final decision.

At the time of negotiation, the owner may express concern that a remainder property is of no use or is a burden for reason of taxes and maintenance. This should be brought to the attention of the Senior Property Officer for consideration and decision as to whether it meets the definition of uneconomic remnant that is stated above. However, the Department is not obligated to purchase an uneconomic remnant if that remnant is contaminated with hazardous or other wastes.

It is clearly evident that if the entire property is being acquired, valuation will be based on the total property value. The owner is entitled, however, to the value of the part taken and damages to the remainder and must be informed of those amounts if he or she so chooses.

### **5-9.04 Developer Project Acquisitions**

Plans for private development (e.g., shopping centers, strip malls) may require changes in existing traffic patterns on the highways that are adjacent to the developed area. Design plans that include existing right of way limits are submitted to the Department by the developer. After review of these plans, the need for an additional right of way as a result of the developer's project are identified and transmitted to the developer for further action. A right of way plan prepared by their engineering firm will be submitted for approval. It is MaineDOT's responsibility to assure appropriate process in acquiring and recording these rights and submitting that documentation to the appropriate Project Manager.

Upon approval of final plans by MaineDOT, the developer shall acquire or obtain any additional right-of-way or easement rights so required before commencing construction. Title to such right-of-way or easement rights so acquired shall be conveyed to “State of Maine, its successors and assigns forever, acting by and through its Department of Transportation”. Easement language should follow MaineDOT format, and easement types should follow MaineDOT practice. Standard easement language for easements typically required for highway projects is available from MaineDOT upon request.

Prior to acquisition of rights, draft deeds and easement documents must be submitted to MaineDOT for approval. Unless previously approved by the Legal Services Office, conveyances of permanent rights to the State of Maine must be by warranty deed. When rights are acquired and conveyed, original paperwork shall be forwarded to MaineDOT Traffic Section, along with final mylar plans showing the new R/W limits. MaineDOT Traffic Section will be responsible for filing paperwork and plans with the Property Office.

The Developer shall not file deeds conveying permanent property rights to the State of Maine at the County Registry of Deeds. The Legal Services Office will file approved deeds at the Registry. The Developer should submit a completed Maine Revenue Services Real Estate Transfer Tax Declaration form with each deed. On each transfer tax form, the box in Section 6(c) should be checked and the following language inserted in that section: *“Seller and Buyer are exempt pursuant to 36 MRSA 4641-C(1). This is a conveyance for transportation purposes.”*

#### **5-9.05 Donations**

The Department can accept donations of property that would otherwise be acquired for a project. Prior to acceptance of any donation, the Department must inform the owner of the right to receive just compensation for the property, based on an appraisal by a qualified appraiser unless the property comes within the purview of the Waiver Valuation Procedure. All donations of property prior to approval of the NEPA document must meet the environmental requirements of **NEPA** and 23 **USC** 323(d). It should be noted that it is not the Department’s policy to solicit donations. Typically, the offer to donate should come from the owner rather than the acquiring agency. The accepting agency should insure the owner understands the right to receive just compensation before the donation is accepted by having the owner acknowledge that right in writing.

The owner will sign an agreement that states the owner’s awareness of the right to have the property appraised and to receive just compensation. Also, the owner will be advised of the date by which the property is to be vacated. The completed agreement should be submitted to the Senior Property Officer for review and approval. Where appropriate, advice will be requested from the Legal Division.

On Federal-aid projects, a credit to the State’s matching share can be made based on the fair market value of the donated property. This value cannot include any increases or decreases in value caused by the project. The fair market value should be based on an estimate that is prepared by a qualified staff appraiser commensurate with the complexity of the underlying property acquisition.

Credit for any donations that are made in exchange for construction features of services will be limited to the estimated fair market value less the cost of those features or services.

#### **5-9.06 State and Local Contributions**

Real property owned by the State of Maine or by a municipality that is incorporated within the right of way of a federally funded project may be used as a credit toward the non-Federal matching share of the project. This provision does not apply to property that was initially acquired with any kind of Federal financial assistance, or to lands already in use for transportation purposes.

The amount of the credit will be the fair market value as discussed in Section 5-9.05.

The prerequisite conditions in Section 5-7.04 apply to the credit to the extent they were applicable at the time the real property was initially acquired by the State or the municipality. A certification as to compliance with these requirements will be made by the donating agency. Relocation benefits will apply to persons displaced from pre owned property unless the property was rented specifically on the basis of short-term occupancy pending need for project purposes.

#### **5-9.07 Property Pin Replacement**

Maine Law, 14 MRSA Section 7554-A requires MaineDOT establish policies and procedures for replacing property boundary markers that are obliterated by any public improvement. The law requires maintenance of records that describe landmark boundary markers and their locations in sufficient detail to reestablish points at their former location. The law gives the Department the flexibility of re-establishing the point, or making payment to the owner for the cost of re-establishment.

MaineDOT survey crews and staff responsible for the development of existing conditions plans should review title and boundary surveys to determine the existence of boundary markers. The locations should then be confirmed in the field, plotted on right of way maps and maintained in appropriate databases.

Negotiators should confirm the existence and location of the boundary markers with property owners at initiation of negotiations, make note of the confirmation and discussion in the Negotiator's Log, and report any conflicts to the Property Office.

Maine DOT will re-establish the point of former location of any disturbed boundary marker as shown on a right of way map or in MaineDOT records at no cost to the owner, upon the owner's request.

Under certain conditions, the MaineDOT may reimburse a property owner for reasonable survey costs to set a marker on the new right of way line. These conditions are:

- The property owner has provided a copy of a mathematically retraceable boundary survey completed by a Licensed Professional Land Surveyor on or after October 3, 1973, which shows the location of the disturbed boundary markers
- **and**
- The location of the disturbed boundary markers is shown on the MaineDOT right of way maps and property owner surveys,
- **and**
- The subject property is impacted by a taking in fee simple absolute that changes the point of intersection with the new right of way line and sideline boundaries
- **or**
- The subject property is bisected by a project being built on new location. In this case, new boundaries are being created by the bi-section of the parcel, so there are no existing pins to disturb. Reimbursement is intended to set pins on the new boundaries.

MaineDOT is not responsible for resolving boundary disputes between abutting owners. In the event of a boundary dispute, MaineDOT reserves the right to re-establish the boundary marker at the point of former location.

Requests for re-establishing or setting boundary markers should be made to the Chief Surveyor through the Project Negotiator on form AQ-18. The Chief Surveyor will consider all appropriate information presented in deciding the eligibility for reimbursement and the amount of the reimbursement. The decision of the Chief Surveyor is final.

#### **5-9.08 Acquiring from Special Entities**

Special entities include utilities, railroads, Indian nations and political jurisdictions. MaineDOT has repeated or continual contact with these entities and it is important that they be dealt with consistently. In addition, the relationship of special entities with MaineDOT is controlled by State and Federal laws and regulations. MaineDOT is involved with special entities at the earliest planning phase, and frequently agreements are reached in the public interest that involves restoration of facilities or construction features that mitigate damage. Monetary payment based on appraised value may not be the sole determinant of just compensation.

Right of Way Project Team members will be guided by the Chief Property Officer and Director of the Property Office in acquisition activities involving special entities.

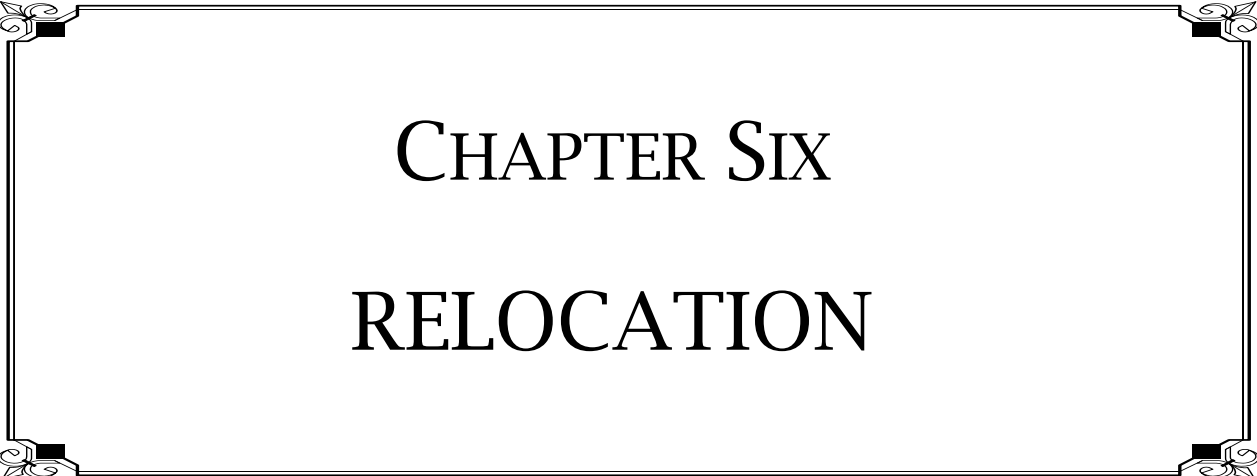
#### **5-9.09 Dedications**

Dedications are acquisitions of real property for transportation projects that arise from the actions of local planning and zoning authorities. A large private development proposal may secure local zoning approval subject to “dedication” of a part of the tract for highway use. The dedicated part may enable improvements identified on MaineDOT’s six year Capitol Improvement Plan, or resolve transportation needs created by the development proposal.

Dedications arise from local zoning and are not initiated by MaineDOT. The Department is interested in assuring that it has unencumbered title to land it accepts for highway use.

Therefore the private owner making the dedication will be advised that MaineDOT may condemn over the transfer to assure clear unencumbered title to the property.





# CHAPTER SIX

## RELOCATION

MAINE RIGHT OF WAY MANUAL

*December 2010*

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# CHAPTER SIX

## RELOCATION

### 6-1 GENERAL INFORMATION

#### 6-1.01 Introduction

On occasion, the acquisition of property for a highway on new location, or to expand an existing facility, causes the displacement of residences, businesses or farms. MaineDOT implements a comprehensive program of services and benefits to insure, to the maximum possible extent, the timely and successful relocation of residential displacees and the reestablishment of businesses in new locations. These benefits are defined in Federal law and Maine Statutes and provide assistance in addition to the just compensation paid for acquired property that is required under the U.S. Constitution's 5th Amendment.

The Department's relocation program carries out provisions of the ***Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** (as amended in 1987). This is known as the ***Uniform Act***. The MaineDOT program also complies with 23 ***MRSA*** Sections 241 through 247. The provisions of this Chapter conform to Federal regulations implementing the ***Uniform Act*** found at 49 ***CFR*** 24.

The instructions in this Chapter will guide the administration of the relocation program in a manner that is equitable, consistent and cost effective. The objective is to insure that displaced persons and households will not suffer disproportionately as a result of MaineDOT's capital improvement program. Effective relocation program services will also encourage and expedite acquisition by agreement, minimize litigation, promote public confidence and insure that the policies are implemented in an efficient and cost-effective manner.

#### 6-1.02 Applicability of Relocation Program Benefits

The provisions of this Chapter are applicable to any person who is displaced as a result of a program or project with Federal or State of Maine funding in any phase of the project cost. State or Federal funds need not participate in the costs associated with the payment for the property to create eligibility.

Property acquired by any State agency, county, town, or local government as a contribution to an MaineDOT-funded project will not be accepted unless all of the payments have been made and all of the assistance and assurance as required by this Chapter are provided.

**Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by this Chapter, the Uniform Act, 49 CFR 24 and Maine Statute.**

**6-1.03 Overview of the Relocation Program**

The relocation of residents who have been displaced for highway acquisition is a needs-oriented program. The program benefits achieve a replacement housing standard that is at least comparable to the housing before displacement, but that also meets needs-based criteria of cost, income and housing quality. This is in contrast to the property acquisition process, which is based on the market value of what is acquired, without regard to the financial circumstances of the owner.

The following are key provisions and assurances of MaineDOT's relocation program:

1. MaineDOT will not require any person to move until at least 1 replacement that is within the financial means of the displaced household dwelling is available for purchase or lease. The replacement must also meet specific qualitative standards of decent, safe and sanitary (DS&S) housing explained in Section 6-1.06.
2. Persons required to relocate will be provided with 90-days advance written notice of the date they are required to vacate.
3. MaineDOT will provide displaced persons with advisory assistance to help them locate a replacement and adjust to the move.
4. MaineDOT will provide payments for increased cost of comparable replacement housing and reimburse for moving costs.
5. Persons who disagree with determinations of eligibility or relocation payment amounts have the opportunity to be heard in an administrative appeal process.

**6-1.04 Eligibility for Relocation Benefits**

The milestone for determining that a move (displacement) is a direct result of the Department's acquisition is the initiation of negotiations for the parcel. Only displaced persons are eligible to receive relocation program benefits. A displaced person is defined as: Any person who moves from real property, or moves personal property from real property, as a direct result of the acquisition of that real property in whole or in part for a program or project undertaken by the Department. Persons who move as a result of a written notice of the Department's intent to acquire the property are also considered displaced persons.

All occupants on a property at the date that MaineDOT presents a written offer to purchase the property are eligible for relocation benefits, subject to the restrictions identified below.

The Department may advance the date of eligibility for benefits to alleviate a hardship. This is done by issuing a letter of intent to acquire the property. See Section 6-4.03 for further information on this provision.

Displaced business or farm owners may need to relocate from adjacent property that is not acquired. An example would be MaineDOT acquisition of property containing a factory. A warehouse used to store raw material and finished product is on adjacent property that is not acquired. Reimbursement for moving costs would extend to the warehouse as well as the factory, because the facilities are dependent on each other, and the displacement of the factory causes relocation of the warehouse. The decision to approve relocation from property not acquired is based on the circumstances of each case. The key criteria are that there be a unity of use between the property acquired by MaineDOT and the facility off the right of way, and the acquisition causes the need to relocate from both.

A person who occupies real property prior to its acquisition, but who does not meet the length of occupancy requirements in Sections 6-7 and 6-8, is a displaced person and is still eligible for some relocation benefits.

The following is a listing of persons who do not qualify as displaced persons:

1. A person who moves before the initiation of negotiations, unless the Department determines that the person was displaced as a direct result of the project by issuance of a letter of intent to acquire;
2. A person who initially enters into occupancy of the property after the date of its acquisition for the project;
3. A person who has occupied the property for the purpose of obtaining assistance under the ***Uniform Act***;
4. A person who is not required to relocate permanently as a direct result of the project. If a tenant-occupant is not displaced but will be required to move temporarily in connection with the project, the temporary housing must be DS&S. The tenant will be reimbursed for all move expenses and increased housing costs during the temporary relocation;
5. An owner occupant who voluntarily sells property to MaineDOT after being advised in writing that MaineDOT will not acquire by condemnation if the property can not be purchased by amicable agreement. This provision of 49 ***CFR*** 24.101(a)(1) is only applicable if MaineDOT is purchasing property for purposes other than highway right of way. This may include purchase of property for housing of last resort;
6. A person who MaineDOT determines is not displaced as a direct result of a partial acquisition;
7. A person who, after receiving a notice of relocation eligibility, is notified in writing that he or she would not be displaced for a project. This notification will only be issued in a case where a person has not moved. MaineDOT will reimburse expenses incurred to satisfy any binding contractual obligations entered into after the effective date of the notice of relocation eligibility;

8. An owner-occupant who voluntarily sells his or her property, after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached; the Department will not acquire the property. In these cases, however, any resulting displacement of a tenant is subject to the regulations in this part;
9. A person who retains the right of use and occupancy of the real property for life following its acquisition by the Department;
10. A person who is determined to be in unlawful occupancy or a person who has been evicted for cause, under applicable law, prior to the initiation of negotiations; and
11. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits as provided in 49 **CFR** 208. Also, see Section 6-1.10.

#### **6-1.05 No Waiver of Relocation Assistance of Benefits.**

Neither the MaineDOT, nor a local agency functioning under these guidelines, may propose or request that a displaced person waive his or her rights to relocation assistance or benefits. All displacees are entitled to a clear explanation of the benefits available to them and will not be pressured into foregoing these benefits.

#### **6-1.06 Relocation Program Definitions**

The following definitions are used in the relocation program:

1. **Acquisition Date:** The date the Department obtains title to the real property.
2. **Adequate Replacement Housing:** A dwelling that meets the criteria for comparable replacement housing except that it is not functionally equivalent to the displacement dwelling.
3. **Business:** Any lawful activity, except a farm operation, see definition of farm, that is conducted primarily:
  - a. For the purchase, sale, lease and rental of personal and real property;
  - b. For the manufacture, processing or marketing of products, commodities or any other personal property;
  - c. For the sale of services to the public;
  - d. For outdoor advertising display purposes, when the display must be moved as a result of the project; or
  - e. By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

4. **Comparable Replacement Dwelling:** A dwelling that is:
- a. Decent, safe and sanitary as described in Section 6-1.07 of this Chapter;
  - b. Functionally equivalent to the displacement dwelling. The term “functionally equivalent” means that it performs the same function provides the same utility. Although a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Department may consider reasonable tradeoffs for specific features when the replacement unit is “equal to or better than” the displacement dwelling.
  - c. Adequate in size to accommodate the occupants;
  - d. In an area that is not subject to unreasonable adverse environmental conditions;
  - e. In a location that is generally not less desirable than the location of the displaced person’s dwelling with respect to public utilities and commercial and public facilities and that is reasonably accessible to the person’s place of employment;
  - f. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also definition 8. Dwelling Site);
  - g. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance;
  - h. Within the financial means of the displaced person. (See also definition 12. Financial Means); [and](#)
  - i. For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases, any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply. (24.2(a)(6)(ix).
5. **Department:** The State of Maine acting through the Maine Department of Transportation (MaineDOT).
6. **Displacee:** Any person who meets the definition of a displaced person.

7. ***Dwelling:*** The place of permanent or customary and usual residence of a person, according to local custom or law. This may include a single-family house; a single-family unit in 2-family, multi-family or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.
8. ***Dwelling\_Site*** The term dwelling site means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area.
9. ***Family.*** Two or more individuals living together in a single-family dwelling unit. They may be related by blood, adoption, marriage or legal guardianship, or not be related by blood or legal ties but live together by mutual consent.
10. ***Farm\_Operation.*** Any activity that is conducted solely or primarily for the production of 1 or more agricultural products or commodities, including timber, for sale or home use and is customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
11. ***Federal\_Financial\_Assistance.*** A grant, loan or contribution that is provided by the United States, except any Federal guarantee or insurance and any interest reduction payment, to an individual in connection with the purchase and occupancy of a residence by the individual.
12. ***Within the Financial\_Means of a Displaced Person:***
  - a. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days before initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs and all eligible incidental expenses that are described in Sections 6-7.03, 6-7.04 and 6.7.06, plus any additional amounts that are required to be paid in Section 6-10 Replacement Housing of Last Resort
  - b. A replacement dwelling rented by an eligible displaced person is within the displacee's financial means if, after receiving rental assistance under Section 6-8.02, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as defined in section 6-8.02(b).
  - c. For a displaced person who is not eligible to receive a replacement housing payment because the person does not meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if MaineDOT pays that portion of the monthly housing costs of a replacement dwelling that exceeds the person's base monthly rental for the displacement dwelling as defined in section 6-

8.02(b) 2 or 3. Such rental assistance will be paid under replacement housing of last resort.

13. **Household Income:** The term household income means total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students less than 18 years of age. 24.2(a)(15)
14. **Initial Occupant.** Any person who is in occupancy of real property at the initiation of negotiations for the acquisition of the property. Also, it includes a person who has been given a written notice of the Department's intent to acquire the real property by a given date. In each case, the property must be subsequently acquired, with the person moving, or moving personal property, from the real property after having established eligibility as a displaced person.
15. **Initiation of Negotiations for the Parcel.** The date the Department initially presents the owner or representative with the written offer for acquisition of the property.
16. **Last Resort Housing Project.** A project that is authorized for the construction, purchase and/or rehabilitation of dwellings as replacement housing units for highway displacees.
17. **Mobile Home:** The term *mobile home* includes manufactured homes and recreational vehicles used as residences. A recreational vehicle may be considered a replacement dwelling if: (a) it is purchased and occupied as the primary place of residence; (b) it is located on a purchased or leased site and is connected to or has available all necessary utilities for functioning as a housing unit on the date of inspection by the acquiring agency; (c) it meets all local, State and Federal requirements for a decent safe and sanitary dwelling.
18. **Mortgage.** A lien to secure advances on, or the unpaid purchase price of real property, under the laws of Maine, together with the credit instruments, if any, secured thereby.
19. **Nonprofit Organization.** An organization that is recognized under Maine law as a nonprofit organization and so is exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (28 **USC** 501).
20. **Owner.** A person who purchases or holds any of the following interests in real property:
  - a. Fee title, a life estate, a 99-year lease, or a lease including any option for extension with at least 50 years to run from the date of acquisition;

- b. An interest in a cooperative housing project that includes the right to occupy a dwelling;
  - c. Purchaser of installment purchase contract, or bond for deed, by which title passes to the buyer on completion of payments; and
  - d. Any other interest, including a partial interest that in the judgment of the department warrants consideration as ownership.
21. **Person.** A partnership, company, corporation or association as well as an individual or family.
22. **Rent Supplement.** The amount in addition to present rent that is necessary to enable a displaced person to lease or rent a comparable replacement dwelling.
23. **Replacement Housing Payment.** The amount, when added to the amount MaineDOT pays for the displacement dwelling, will enable the owner displacee to purchase a comparable replacement dwelling.
24. **Small Business.** A business having 500 or fewer employees working at the site that is being acquired or being permanently displaced by a program project. The site must be the location of economic activity. Sites occupied solely by outdoor advertising signs or devices do not qualify as businesses for purposes of reestablishment expenses.
25. **Tenant.** An individual or family who rents, or is temporarily in lawful possession of, a dwelling unit, including a sleeping room.
26. **Utility Costs.** The term *utility costs* means expenses for **electricity, gas, other heating and cooking fuels**, water and sewer.
27. **90-Day Owner.** An initial occupant who has owned and occupied the dwelling from which he or she is being displaced for less than 180 days, but not less than 90 consecutive days immediately prior to the initiation of negotiations.
28. **180-Day Owner.** An initial occupant who has owned and occupied the dwelling from which he or she is being displaced for at least 180 consecutive days immediately prior to the initiation of negotiations.

#### **6-1.07 Standards for Decent, Safe and Sanitary Housing**

Decent, Safe and Sanitary (DS&S) is the term used to indicate basic health and safety standards that are applicable in referring replacement housing to displacees. Also, residential displacees must occupy DS&S replacement housing to qualify for Rent Supplement or owner

RHP. It is important that this key term is understood in order to apply it accurately and consistently.

The term “DS&S dwelling” means a dwelling that meets applicable local housing occupancy codes. The following are minimum criteria if any of the following standards are not exceeded by the local code. The dwelling shall:

1. Be structurally sound, weather tight and in good repair;
2. Contain a safe electrical wiring system adequate for lighting and other devices;
3. Contain a heating system that is capable of sustaining a healthful temperature (approximately 70°f) for a displaced person;
4. Be adequate in size with respect to the number of rooms and living space needed to accommodate the displaced person. Have an adequate number of rooms to provide separate bedrooms for children of the opposite gender and meet the requirements of local codes.
5. Have a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and toilet, all in good working order and properly connected to appropriate sources of water and to a sewerage disposal system;
6. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink properly connected to potable hot and cold water that is properly connected to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator;
7. Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least 2 means of egress;
8. For a displaced person who is disabled, be free of barriers to accommodate reasonable ingress, egress or use of the dwelling by such displaced person. This includes doors of adequate width, ramps, or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks. Maine DOT will consider other items that may be necessary, including physical modifications, based on the displaced person's needs.

#### **6-1.08 Relocation Records and Files and Reports**

Complete and accurate records are essential to a successful relocation program. They are important in computing relocation payments, providing advisory services, issuing required notices and supporting audit reviews and claims for Federal reimbursement. Records should be

developed concurrently to the activity being recorded. They should be maintained in a well-organized manner on a parcel basis.

Relocation records may contain personal and financial information that must be kept confidential. Therefore, store relocation records and files in a locked facility when not in personal control of the Agent responsible for the case. Do not share information from files with any other person, including other MaineDOT employees, except by authorization by management. Refer public or media requests for records to MaineDOT's Chief Legal Counsel. The relocation records on federally assisted projects will be available for inspection by representatives of the Federal Highway Administration. Persons who are appealing a MaineDOT relocation action will be provided reasonable access to the records that pertain to their claim.

The MaineDOT standard relocation forms, plus all memoranda and correspondence concerning the relocation claim, comprise the official file. Extraneous papers should not be kept in the official file. Original signed documents, not copies, should be retained in the record file. Relocation records will be controlled and retained as provided in Administrative Policy Memorandum No. 121 revised, dated February 7, 2001.

MaineDOT provides a yearly statistical report of relocation and real property acquisition to the Federal Highway Administration. The format for this report is in the Federal regulation at 49 **CFR** 24, Appendix B.

#### **6-1.09 Civil Rights**

The **Maine Human Rights Act** declares it unlawful to discriminate against any person for reason of race, color, sex, physical or mental disability, religion, ancestry or natural origin. Further, Title VI of the **Civil Rights Act of 1964** states that "No person...shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Any complaint or inquiry of discrimination in the administration of MaineDOT's relocation program should be brought to management attention by whoever receives it. MaineDOT will review the matter and attempt to resolve the issue amicably. If resolution is not achieved in this manner, MaineDOT will request review by the Maine Human Rights Commission. MaineDOT staff will cooperate fully in any review.

In administering the relocation program, MaineDOT commits to comply with other Federal laws and Executive Orders. These are listed at 49 **CFR** 24.8.

#### **6-1.10 Assurances and Certifications**

MaineDOT has provided assurances to the Federal Highway Administration that is required by Sections 210 and 305 of the **Uniform Act**. These affirm MaineDOT's commitment to comply with provisions of the **Uniform Act** and Federal implementing regulations at 49 **CFR** 24 and 23

**CFR 710.** The assurances of compliance also apply to any local government that acquires property and displaces persons for projects that are reimbursed with State or Federal funds.

#### **6-1.11 Persons Not Legally Present in the United States**

The **Uniform Act** prohibits relocation payments or relocation advisory assistance to persons who are not legally present in the United States. Each person submitting a relocation claim will be required as a condition of eligibility to certify status as either a citizen or national of the United States or an alien who is lawfully present in the United States. An exception to the denial of benefits is permitted if MaineDOT determines that the denial would result in exceptional and extremely unusual hardship to the person's spouse, parent or child who is a citizen or an alien in legal residence in the United States.

The circumstances involving persons who are not legally present can be complex, and MaineDOT is committed to implementing provisions in a fair and nondiscriminatory manner. Any situation or issue involving persons not legally present in the United States should promptly be brought to the attention of the Property Office for review and determination. See Section 6-7.02(d) for further guidance concerning this topic.

#### **6-1.12 Multiple Occupants of a Displacement Dwelling**

If 2 or more occupants of a displacement dwelling move to separate replacement dwellings, each occupant are entitled to a reasonable prorated share, determined by MaineDOT, of any relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling. However, if MaineDOT determines that the occupants maintain separate households within the same dwelling, the occupants will have separate and independent eligibility for relocation benefits.

#### **6-1.13 Process for Payment of Claims**

The process for payment of claims for relocation benefits requires diligence and attention to detail. Each displacee may be eligible for 2 to 6 separate benefit amounts, and each may have different eligibility or qualification criteria. The claims may be processed at different times in the relocation process. Reimbursable costs must be confirmed as actual, reasonable and necessary. Claims must be paid and delivered in a timely manner to insure that displacees have the means to purchase or rent replacement housing and pay for moving costs.

MaineDOT shall endeavor to make expeditious payment to displacees. If additional documentation is required to support a claim, the displacee is advised promptly and advised specifically what is required.

The following provides guidance on the critical elements for processing claims:

1. Tenant displacees must file claims for payment within 18 months after the date of displacement.

2. Owner-occupant displacees must file claims within 18 months after the later of the date of displacement or the final payment for acquisition of the property.
3. MaineDOT, at its discretion, may make advance payment to displacees to alleviate hardship circumstances that would prevent a timely move. Adequate measures will be taken to insure that the funds are applied to the intended purpose.
4. MaineDOT, at its discretion, may deduct any rent that a displacee owes the State for relocation claims. However, no deduction will be made if this would prevent the displacee from obtaining a comparable replacement dwelling. No deduction will be made from any relocation claim to satisfy an obligation to any other creditor unless so ordered by a court.
5. MaineDOT will promptly notify a displacee in writing if part or all of a claim is disapproved. The notification will provide the basis for the determination and the procedure for appeal.
6. The Relocation Agent will provide reasonable assistance to a displacee if it is necessary to complete and file any required claim for payment.
7. A person will not receive a relocation payment if it duplicates a payment under the Federal, State or local law that MaineDOT determines has the same purpose and effect as a payment under this Chapter.
8. If a displacee has moving costs paid by an employer, the displacee would not be eligible for duplicate moving costs paid by MaineDOT.
9. Any lawful occupant evicted for cause on or after the initiation of negotiations will retain the right to relocation payments and other assistance unless MaineDOT determines otherwise.

#### **6-1.14 Quality Assurance**

Quality assurance in relocation is an inclusive process of evaluating performance and developing ways to continuously improve the accomplishment of program goals. Quality assurance is a shared responsibility of all persons involved in the relocation function.

Quality in the relocation function includes the following elements:

1. Effective coordination with project team members responsible for other project development activities;
2. Timely and relevant assistance provided to displacees, with special focus on those having special needs, including the elderly and disabled;

3. Assessment of relocation-related needs of relocation personnel (e.g., training, equipment);
4. Identification of critical path tasks involving relocation, including prioritizing so that more time is available to those having more serious relocation problems;
5. Evaluation of consultant staff who are employed by the department to perform relocation services;
6. Participation in process and performance evaluations, including 360-degree evaluations; and
7. Participation in the continuous refinement of relocation practice and policy to reflect best practices in the field of work.

Quality assurance is a focus on achieving improvement in the performance of the relocation function using tools of policy, training, evaluation and communications. MaineDOT's continuing refinement of quality assurance includes the development of performance criteria and evaluation methods to establish goals and measure progress in meeting goals.



## **6-2 RELOCATION PLANNING**

### **6-2.01 General**

The primary goal of MaineDOT's relocation program is the timely and orderly relocation of persons who are displaced by a project. This requires obtaining detailed knowledge of the needs and intentions of displacees. It also requires securing information on available replacement housing and sites for displaced businesses. Relocation planning is a process of obtaining and evaluating information on displacee needs and the recourses required to meet those needs.

All projects involving displacements require relocation planning to be undertaken as a formal process in order to:

1. Insure that sufficient replacement housing will be available;
2. Identify displacees who have special needs (e.g., elderly, disabled, low-income individuals);
3. Determine the need for special relocation services (e.g., language interpretation, transportation to view potential replacement housing);
4. Determine the time required to complete relocation on the project; and
5. Determine relocation staffing, or whether a project office is needed to serve displacees.

Most MaineDOT projects involve 1 or a few displacements and do not require preparation of a formal relocation plan. However, the process of defining needs and resources discussed in this Section should meet the minimum criteria as determined by the Department for projects having a low scale of displacement.

Relocation planning is only effective if it is performed early in the project development process. This is necessary so that methods and strategies can be developed to alleviate any problems that are identified before displacement occurs. For instance, if last resort housing is needed, it will require additional time to plan and provide the housing; see Section 6-10. Similarly, large families or low-income households may require additional time to find housing or may need intensive relocation services from MaineDOT.

### **6-2.02 Conceptual Stage Relocation Planning**

Relocation planning should begin as soon as displacees are identified on a project location. This is known as the conceptual stage. At this stage, there may be more than 1 alignment under consideration. Sufficient information is developed at this stage to provide a cost estimate for relocation and to identify the number and type of dwellings and businesses that will be affected. Neighborhood and displacee characteristics are described as can be determined from

visual inspections and secondary sources (e.g., newspaper reports, leaders of community organizations).

The information and conclusions developed in conceptual stage planning will be used in the environmental impact statement or the environmental assessment if these documents are required. They will also be used in the public hearings and meetings conducted for the project.

Consider the following elements when developing a conceptual stage relocation plan:

1. An estimate of households to be displaced, including the family characteristics (e.g., minorities, approximate income levels, tenure, elderly, large families);
2. Any divisive or disruptive effect on the community (e.g., the separation of residences from community facilities, separation of neighborhoods);
3. Impact of the displacement on housing availability where relocation is likely to take place;
4. The number of businesses, nonprofit organizations and farms that would be acquired and the estimated number of employees affected;
5. An assessment of the effect the nonresidential displacements will have on the economy and stability of the community;
6. A list of businesses being displaced that will require advance coordination and planning so they can be contacted and advised of the studies being made by MaineDOT and of the opportunities for their input through public hearings and meetings;
7. A description of available housing in the area that is appropriate to provide housing for the types of families to be displaced. Contact may be made with local real estate firms, listing services, newspapers, housing agencies, local community organizations, etc.;
8. A description of special relocation advisory services that may be necessary for identified unusual conditions (e.g., a concentration of elderly displacees);
9. A description of the actions that may be needed to remedy insufficient relocation housing, including, if necessary, housing of last resort;
10. Outcome of consultation with local officials, service agencies and community groups regarding the impact on the community affected; and
11. An estimate of relocation costs, separated as follows:

- a. Cost of moving personal property for residential units, businesses, farm operations and nonprofit organizations;
- b. Cost of replacement housing payments (rhps) for displaced individuals and families, including typical mortgage interest differentials and closing costs incident to the purchase of replacement facilities;
- c. Cost potentially incurred by businesses, farms and nonprofit organizations in searching for replacement facilities; and
- d. Reestablishment costs for small businesses, farms and nonprofit organizations.

Use MaineDOT Forms RA-1, RA-2, RA-3, RA-4, RA-5, RA-6, RA-7 and RA-10 to record conceptual stage data. A narrative report may be prepared to summarize data and conclusions. The Relocation Agent will forward the planning documents to the Relocation Manager who will review and forward Form RA-10 and comments to the Chief Property Officer and Project Manager.

### **6-2.03 Relocation at Right of Way Stage**

The right of way stage begins when a location for the project is approved. At this point, the displacements on the project are identified. Relocation planning at this stage identifies the housing needs, desires and intentions of displaced persons, and develops priorities and strategies for meeting relocation needs. If the project has significant relocation, the Department will prepare a formal relocation plan before starting negotiations to acquire property on the project.

A Relocation Agent will be assigned to conduct interviews with displaced households and business operators and examine the real estate market for properties of the type and cost (rent or purchase) that will meet displacement needs.

The relocation planning activity will be scoped to fit the anticipated complexity and nature of the displacement. Whether or not the relocation plan is a formal report, the Relocation Agent will conduct and document the following activities to the extent applicable:

1. Personally interview each household. Information secured will include household composition (e.g., gender, age, and family status), dwelling characteristics, gross family income, employment location, housing cost (e.g., rent, mortgage facts, utilities), desires and intentions for replacement housing, and concerns relating to age and/or disability. For Residential displacements use Form RA-1\_\_\_\_\_.
2. Conduct a personal interview with the principal owner of each displaced business. At a minimum these interviews should include the following items:
  - a. The business's replacement site requirements, current lease terms, other contractual obligations, and the financial capacity of the business to accomplish the move.

- b. Determine of the need for outside specialists in accordance with Section 24.301(g)(12) who will be required to assist in planning the move, assist in the actual move and reinstall machinery and other personal property.
  - c. Identify and resolve any issues of personal property vs. realty prior to commencing the appraisal.
  - d. Estimate the time required for the business to vacate the site.
  - e. Estimate the difficulty in locating a suitable replacement property and estimate the number of suitable business sites available.
  - f. Identify the need for any advance relocation payments required to support the move and determine the MaineDOT's capacity to provide them. For business displacements use Form RA-12\_\_\_\_\_.
3. Provide a copy of the MaineDOT relocation brochure and discuss points in the brochure that are relevant to the circumstances of the household or business. This serves as the General Information Notice that is required to be provided to each potential displacee. See Section 6-4.01.
4. Prepare an inventory of the characteristics and needs of individuals and families to be displaced based on the standard of comparable replacement housing. Use Form RA-11. Also, inventory the businesses, farm operations, nonprofit organizations and personal property to be displaced, recording data on Forms RA-12 and RA-13 and summarizing all data on Form RA-2.
5. Develop an estimate of currently available comparable replacement housing. Include the type of buildings, number of rooms and adequacy of housing as related to the needs of the persons or families to be relocated. Address the type of neighborhood, proximity of public transportation and commercial shopping areas, and distance to any pertinent social institutions (e.g., church, community facilities). This estimate should be developed to the extent necessary to determine whether relocation resources are sufficient to meet displacement needs. Use Forms RA-3, RA-4, RA-6 and RA-15.
6. Prepare an analysis and correlation of replacement housing needs and resources using Form RA-8.
7. Outline the special relocation problems and challenges, particularly relating to income, disability, age and house characteristics needed. Evaluate the possible need for last resort housing.
8. Identify Federal, State and community programs that are active in the project area and discuss contacts with organizations that may be beneficial to project displacees.
9. Identify economic activity or public or private projects in the area that may affect the supply and demand for housing or cause concurrent displacement. Evaluate the effects on project relocation.

10. Estimate the lead-time and staffing required to perform efficient delivery of relocation benefits and carry out a timely, orderly and humane relocation program.
11. Develop an updated relocation cost estimate using Form RA-10.
12. Assess the need for a field office. Consider the number of displacees served, the relocation problems that will be encountered, and the capacity to provide services from a Division Office.
13. Summarize the information above, providing conclusions and recommendations for consideration of MaineDOT management.

The completed relocation plan will be routed to the Relocation Manager. The Program Manager or the Director, Bureau of Project Development will approve special services or resources needed to perform relocation as recommended in the plan.

#### **6-2.04 Last Resort Housing Plan**

If housing of last resort is determined necessary to provide comparable housing within displacees' financial means, a report will be developed that evaluates options and methods of providing housing. The assigned Relocation Agent will prepare the report at the earliest time that the need is identified and refine it as the case proceeds. The scope of the report will relate to the complexity of the relocation problem and the options available for consideration. See Section 6-10 for further discussion of last resort housing.



### **6-3 RELOCATION ADVISORY SERVICES**

#### **6-3.01 Purpose**

Relocation advisory services are the elements of direct personal assistance that are provided to displacees to assist them in locating comparable replacement housing or replacement sites for businesses. In addition, advisory services are the means to provide information to displacees on program benefits, and assist them in completing claims and provide help in adjusting to relocation. This Section provides guidance in determining the scope and level of services to be provided and in planning and delivering these services to displacees.

The Department performs relocation assistance advisory service that insures that displaced persons will receive services relevant to their needs and are delivered without regard to race, color, religion, sex or national origin. The services are intended to assist each displacee to relocate to Decent, Safe and Sanitary (DS&S) housing that meet the displacee's specific needs. The services are provided by personal contact. If personal contact cannot be made, the assigned Agent will record the efforts made to make personal contact and offer services.

#### **6-3.02 Eligibility for Advisory Services**

Relocation assistance advisory services will be offered to the following persons:

1. Displaced persons as defined in Section 6-1.04;
2. Any person occupying property that is adjacent to the real property acquired, when the Senior Property Officer determines that a substantial economic injury to that person will result from the acquisition;
3. Any person who, because of the acquisition of real property used for his or her business or farm operation, moved from other real property used for a dwelling or moves his personal property from such other real property; and
4. Any person who occupies property after acquisition by MaineDOT on a short-term basis subject to termination when the property is needed for the project (23 **MRSA** 243-4).

#### **6-3.03 Advisory Service Requirements**

The Department's relocation assistance advisory services program includes the following measures, facilities and services that are provided consistent with each displacee's needs and circumstances as determined in the relocation planning phase:

1. Determine the relocation needs, preferences and intentions of each person to be displaced; see Section 6-2.03.

2. Explain the relocation eligibility requirements that pertain to benefits that are applicable to the class of displacement. Advise displacees that payments are not considered income for tax purposes.
3. Provide current and continuing information on the availability, purchase prices and rental costs of comparable replacement dwellings. Explain that no one can be required to move unless comparable replacement dwelling is available.
4. Inform the person of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of relocation payments. The basis for the determination should be explained.
5. Provide reasonable opportunity to minority persons to relocate to DS&S replacement dwellings that are not located in areas of minority concentration and that are within their financial means. However, the Department will not provide a higher payment than is otherwise needed to enable a person to relocate to a comparable replacement dwelling.
6. Offer all displacees, especially the elderly and disabled, transportation to assist in finding replacement housing. Transportation options can include cab or bus fare, providing rides in a state owned or personally owned vehicle, or reimbursing a displace friend or relative on a per mile basis. Reimbursement rates will be at the state mileage rate.
7. Provide current and continuing information on the availability, purchase prices and rental costs of suitable commercial properties and locations for businesses.
8. Assist any person who is displaced from a business or farm operation to obtain and become established in a suitable replacement location.
9. Minimize hardships to persons adjusting to relocation by providing counseling and advice as to other sources of assistance that may be available. Provide other help as may be appropriate.
10. Where feasible, inspect housing before referring it to the displacee to insure that it meets applicable standards.
11. Provide persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans and other similar programs administered by Federal, State and local agencies. Agencies that can be contacted include social welfare agencies, urban renewal agencies, redevelopment authorities, and public housing authorities, the Department of Housing and Urban Development, the Veterans Administration and the Small Business Administration.
12. Advise any individuals that may be eligible for government housing assistance at the replacement dwelling that such assistance could limit the size of the replacement

dwelling. Also advise the displacee relative to the long term nature of a rent subsidy, vs. the limited 42 month duration of the relocation assistance rental payment.

13. Maintain contact with local information sources on private replacement properties, including real estate brokers, real estate boards, property managers, apartment owners and operators, and home building contractors.

Advisory services will be offered on a basis commensurate with the displacee's needs. This may require only minimum assistance when displacees are well informed and mentally, physically and financially able to manage their displacement, and neither need nor desire MaineDOT's assistance. A much greater degree and intensity of services and assistance will be provided to those who are elderly, infirm, immobile or otherwise unable to cope with their displacement or economic problems.

The Relocation Agent must offer assistance to every displacee. The displacee may specifically state that there is no need for assistance, other than providing payment offers and processing claims. Even then, the Agent must make a subjective judgment as to the ability of the displacee to competently locate, acquire and occupy a DS&S replacement dwelling. If the Relocation Agent does not feel that the displacee possesses the ability to relocate without help, the Agent should make efforts to furnish assistance or refer other service providers having specialized knowledge, skills and programs.

#### **6-3.04 Relocation Payments Not Considered as Income**

Each displacee who is eligible for a relocation payment of any kind will be advised that relocation payments are not considered as income for purpose of the Internal Revenue Code of 1954 as amended (redesignated as Internal Revenue Code of 1986). Also, relocation payments are not to be considered for the purpose of determining eligibility of any person for assistance under the ***Social Security Act*** or any other Federal law, except for any Federal law providing low-income housing assistance. Displacees will be provided reference to 49 **CFR** 24.209, which contains these provisions.

Payments of relocation benefits are shall not be considered to constitute Federal financial assistance. Accordingly, payment of relocation benefits that involve construction of a new home or business will not trigger NEPA or other actions because federal funds are used in the effort.

#### **6-3.05 Local Relocation Office**

The volume of relocation, the needs of the displaced persons, or a remote project location may prevent effective delivery of services provided from a Region Office. In this case, a project relocation office will be established. The office should consider transportation options available to displacees and be convenient and accessible to the displacees served by the office. The

determination whether or not to establish a local relocation office will be made on a project-by-project basis. The project office will be open during hours convenient to the persons served, including evening hours when necessary. Consideration should be given to the employment of people in the local relocation office who are familiar with the conditions of the area.

#### **6-3.06 Information Maintained on a Project Basis**

The following information will be maintained and/or provided for the displacees of each project when appropriate:

1. Current lists of replacement dwellings available to displaced persons without regard to race, color, religion, sex or national origin drawn from various sources, suitable in price, size and condition for displaced persons to the extent they are available;
2. Current lists of comparable commercial properties and locations for displaced businesses;
3. Current data on costs for security deposits, closing costs, typical down payments and interest rates and terms;
4. Maps showing the location of schools, parks, playgrounds, shopping and public transportation routes in the area, where applicable;
5. Schedules and costs of public transportation, where applicable;
6. Copies of the department's brochure explaining its relocation program, local ordinances pertaining to housing, building codes, open housing, consumer education literature on housing, shelter costs and family budgeting;
7. Subscriptions for apartment directory services, neighborhood and general circulation newspapers and internet sites. Use multiple listing services where available; and
8. Other important information of value to displaced persons in the particular area.

#### **6-3.07 Public Information**

To insure that the public has adequate knowledge of the relocation program, the Department will present information and provide an opportunity for discussion of relocation services and payments at public hearings and meetings, provide copies of the relocation brochure and give full and adequate public notice of the relocation assistance program.

In an area where a language other than English is predominant, public information will be published in the predominant language as well as in English, unless the Department determines this is not necessary and an alternative means (e.g., interpreters) is used for the displaced person who is unable to communicate effectively or comfortably in English.

The MaineDOT relocation brochure describes the Department's relocation program and the replacement housing policy contained in this *Manual*. The brochure will be distributed at all public hearings and separately to interested or affected individuals and organizations. The brochure states where information about State policies implementing the relocation assistance program can be obtained.

### **6-3.08 Public Hearings**

The following provides guidance on public hearings:

1. Corridor Public Hearings. The corridor hearing is held to receive public input regarding a proposed project before there is a commitment to a specific location. Several alternative alignments may be presented for discussion. Relocation impacts and the measures MaineDOT will take to alleviate them will be discussed for each location or alignment under consideration.

The following information will be presented:

- a. The estimated number of individuals, families, businesses, farms and nonprofit organizations that are to be relocated by each of the alternatives under consideration;
- b. The availability of relocation assistance and services, eligibility requirements and payment procedures; and
- c. Studies that have been or will be made and the methods that will be followed to insure that housing needs of the displacees will be met.

The MaineDOT representative presenting the information above will be open to hear comments, questions and concerns from persons at the meeting.

2. Highway Design or Combined Public Hearings. The social, economic and environmental effects of the project will be presented and discussed at the hearing that is conducted after the location has been selected or announced as a "favored" location. Displacement is a primary social and economic impact. The discussion on relocation will be more detailed and focused than at the corridor hearing. Information will be presented on the scope of displacement on the project and the basic elements of the Department's relocation program. The following information will be discussed to the extent applicable:

- a. Number and type of displacements (e.g., residential and commercial);
- b. General availability of replacement housing;
- c. Time frame in which acquisition and relocation will occur;

- d. MaineDOT's commitment to offer comparable replacement housing within financial means to every person who is displaced from a home;
- e. Information on moving cost benefits and payment limits;
- f. Owner replacement housing payment (RHP) and rent supplements (RS) for tenants;
- g. Business relocation benefits including moving costs, reestablishment expense payments and search expense payments with ceiling claim amounts;
- h. Mortgage interest rate differential eligibility requirements and payment;
- i. Payment of closing costs incidental to the purchase of a replacement dwelling;
- j. MaineDOT's appeal process, see section 6-3.10; and
- k. The name, location and phone number of a MaineDOT representative who can provide further information or answer questions that arise after the meeting.

#### **6-3.09 Occupancy Criteria for Benefits**

Relocation advisory services are intended to assist persons in relocating and must be offered to all displacees on the project. They may also be offered to all persons occupying property that is immediately adjacent to the real property acquired if the Department determines that the occupant suffers a substantial economic injury due to the acquisition. The Department's intent is to liberally apply this provision so that any person approximate to the project requesting assistance will be considered for this service on the merits of the person's need.

Questions on eligibility frequently arise during advisory service discussions. The following points summarize the basic criteria for benefits:

- 1. Move cost reimbursement is available to all displaced owners and tenants including those in occupancy less than 90 days prior to initiation of negotiations who thereby do not qualify for replacement housing benefits. The only exclusion would be persons who move into a property after the property is legally transferred to MaineDOT.
- 2. RHPs for residential owner-occupants fall into 2 categories. A residential owner-occupant must have owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations to be eligible for a payment up to the \$22,500 maximum. A residential owner-occupant who owns and

occupies for less than 180 days from the initiation of negotiations date but more than 90 days would be eligible for the payment similar to that of a 90-day tenant-occupant.

3. RHPs for residential tenant-occupants will be available to tenants who were renting at least 90 days prior to the initiation of negotiations. On occasion, a payment could be made to a tenant with less than 90 days occupancy in order to avoid a financial hardship under the last resort provisions.
4. There is no RHP eligibility for those residential tenants who take occupancy subsequent to initiation of negotiations unless they are determined to qualify under the last resort provisions for reason of housing not being available within financial means.

### **6-3.10 Relocation Appeal Process**

All displaced persons will be given written notice of their right to appeal as provided below, as well as the procedure for making an appeal. This notification may be provided by the brochure, but should also be stated in initial discussion with each displacee.

When a person indicates dissatisfaction with a determination as to eligibility for a payment or of an amount of payment offered by MaineDOT for any relocation benefit, the Agent will promptly provide the necessary forms and advise the person of the procedures to be followed in making an appeal.

The following points should be covered when discussing a person's right to appeal:

1. The appeal is an informal administrative process. It is not necessary for a displacee to hire an attorney, but representation is not discouraged.
2. The person appealing will have access to MaineDOT file documents that pertain to the matter being appealed.
3. The appellant will have the opportunity to be heard at a time and place that is convenient.
4. The grounds for appeal must be in writing, but may be handwritten.

Upon receipt of any form of appeal, the Relocation Representative will review and update the Parcel File in preparation for the review.

At any time before the appeal is held, the Agent assigned to the parcel may review the facts and circumstances with the Relocation Manager. If there is a basis for modifying the determination under review, the Relocation Manager may make an appropriate recommendation to the Chief Property Officer. The appellant will be advised of any decision and will have the option of accepting any change or continuing with the appeal process.

If the appeal concerns the following activities, the appeal authority is the State Claims Commission (23 **MRSA** 246-1):

1. Actual reasonable moving expense,
2. Replacement housing allowance,
3. Increased interest cost, and
4. Expenses incident to purchase.

The appeal authority for a MaineDOT decision other than for the actions listed above is the Commissioner of Transportation or an assigned delegate.

The appeal authority will hold an administrative hearing on appeal requests at which the person making the appeal will have an opportunity to be heard. The appellant will receive prompt written notice of the appeal determination. This will include an explanation concerning any amount claimed that has been disallowed. Computations and rationale supporting the determination will be placed in the Parcel File.

Any determination made on appeal to the Commissioner of Transportation or the Commissioner's assigned delegate shall be final and nothing in this section may be construed to give any person a cause of action in the State Claims Commission or the Superior Court. (23 **MRSA** 246-2)

## **6-4 RELOCATION NOTICES**

MaineDOT will provide written notices to displacees at critical points in the relocation process. The purpose of the notices is to fully inform each displacee of the significant actions being taken by MaineDOT and of their eligibility for relocation payments and services. These notices provide the supporting information necessary to claim relocation benefits and enable displacees to plan their relocation.

The written notices described in this Section must be furnished to each displaced person.

### **6-4.01 General Information Notice**

This Notice is provided to all affected persons at the earliest time it is known that relocation may be required. It advises the recipient of the possibility of displacement for a project and summarizes the benefits available from MaineDOT to assist in relocation. This required notice is served by providing a copy of the MaineDOT relocation brochure and the opportunity for the potential displacee to ask questions of an informed representative.

The general information about relocation is provided at the public hearings and meetings for the project. In addition, notice is provided at the initial interview with each displacee that is conducted as part of relocation planning; see Section 6-2.03.

The *General Information Notice* is normally delivered in person as indicated above. If personal delivery is not possible, the Notice will be delivered by certified mail with a return receipt requested. Use form RA-16 *Initial Relocation Notice* letter for potential residential displacees. Use form RA-16B *Initial Relocation Notice (business)* for potential business, farm and non-profit displacees.

Provide the following information as part of the General Information Notice:

1. Inform the person of possible displacement as a result of project acquisition.
2. Describe the relocation program benefits that are relevant to the displacee's circumstances.
3. Explain eligibility criteria and requirements for relocation benefits. Advise that MaineDOT will help prepare relocation payment claims if requested.
4. Advise the person of the types of relocation advisory services that will be given. These include housing referrals, assistance filing claims and other necessary relocation assistance.
5. Inform the person that he or she will not be required to move unless at least 1 comparable replacement dwelling unit has been made available for occupancy.

6. Inform the person that MaineDOT will provide at least 90-days written notice of the date that they will be required to move.
7. Explain the right to appeal relocation benefits and eligibility determinations.

#### **6-4.02 Notice of Relocation Eligibility**

Eligibility for relocation assistance begins on the date of a) the *Notice of Intent to Acquire Property* letter (form RA-21) being sent, b) the initiation of negotiations to acquire the property, or c) the actual acquisition, whichever occurs first. When this occurs, MaineDOT will promptly notify all occupants of their eligibility for assistance. The Notice of Relocation Eligibility will be in writing, personally delivered if practical. Where it is not practical to deliver the Notice personally, it will be delivered by certified mail with return receipt requested. The type of Notice will depend upon the following:

1. 180-Day Owner. The owner will be provided with a written explanation of the eligibility requirements to receive payments for replacement housing. The explanation will include discussions of increased interest costs, incidental expenses and the option to rent replacement housing. In addition, the displacee will be provided with an explanation of the relocation services available and where they may be obtained, Form RA-30, and the brochure.
2. 90-Day Owner. The owner will be provided with a written explanation of the eligibility requirements to receive payments for replacement housing and of the option to receive a down payment and incidental expenses to purchase replacement housing. The eligibility requirements for the option to rent replacement housing will be provided by reference to the content in the brochure. In addition, the displacee will be provided with an explanation of the relocation services available and where they may be obtained.
3. Tenant Notice. Within 15 business days of initiation of negotiation for the purchase of the property, each tenant will be furnished, either by certified mail or by personal contact, a written statement that includes:
  - a. The date of initiation of negotiations for the parcel; and
  - b. An explanation of the eligibility requirements to receive a rent supplement payment, and of the option to receive a down payment for the purchase of replacement housing including incidental expenses. The tenant will be provided with an explanation of the relocation services available and where they may be obtained.

The Agent will make a personal contact with each tenant within 30 days of the initiation of negotiations for the parcel to furnish any additional explanations necessary. This contact should be made prior to the 90-day notice to vacate.

**6-4.03 Notice of Intent to Acquire**

The purpose of a *Notice of Intent to Acquire* letter (form RA-21) is to establish eligibility for relocation assistance before initiation of negotiations for the parcel. This occurs when the Department decides to advance the date of eligibility in order to relieve a hardship circumstance. The hardship may arise from a change in employment requiring a move, illness or infirmity making it difficult to continue to live in the property, or financial hardship from inability to continue to pay ownership or tenant housing costs.

The *Notice of Intent to Acquire* is a written communication in the form of a letter notifying the person to be displaced of the MaineDOT's intent to acquire the property. Use Form RA-21 as a *Notice of Intent to Acquire*. Provide a copy of the relocation brochure with the letter. When a *Notice of Intent to Acquire* is provided to an owner, also provide a Notice within 15 business days to all tenants on the property. When a *Notice of Intent* is provided to a tenant, provide a copy of the Notice to the owner at the same time.

The *Notice* will contain the statement of eligibility and any restrictions thereto, the anticipated date of the initiation of negotiations for acquisition of the property, and contact references to obtain additional information about relocation payments and services.

**6-4.04 Statement of Replacement Housing or Rent Supplement Amounts**

Displacees will be notified of the specific maximum amount of replacement housing and moving benefits at the time of initiation of negotiations, or at a time thereafter that they are actively looking for replacement housing. The notification should identify the available comparable property that was the basis for the maximum purchase price supplement determination. Other comparable properties should also be provided. Use form *RA-23 Comparable Replacement Housing Notice* to inform each displacee of the amount of the maximum eligible purchase price supplement or maximum rent supplement.

The Statement for tenant-occupants will include a maximum amount of Rent Supplement, monthly rent and utility cost for the comparable on which the Rent Supplement determination is based, and a list of other comparable properties used in the analysis.

Confirm the housing units used to determine the replacement housing amount are available before the listings are used in the replacement housing determination.

Owners typically want to know their total acquisition and relocation amounts early in the process. The total settlement package includes a combination of the fair market value and RHP amounts. Every effort should be made to present the statement of eligibility with the initiation of negotiations.

**6-4.05 90/30-Day Notice to Vacate**

Residential and business occupants who are displaced are entitled by law to **at least** 90-days advance notice of the earliest date they will be required to move. The *90-Day Assurance Notice* Letter, Form RA\_31 cannot be delivered until MaineDOT has initiated negotiations and informed the residential displacee of a specific comparable replacement dwelling that is available for occupancy that is within his or her financial means. The amount of computed maximum purchase supplement or Rent Supplement must also be provided before the *90-Day Assurance Notice* Letter is delivered.

MaineDOT uses a 2-phase notification process. The *90-Day Assurance Notice*, Form RA-31, may be delivered any time after the above qualifying criteria are met. It should be further coordinated with the project schedule. The MaineDOT *90-Day Assurance Notice* provides that the recipient will be required to move no earlier than, 90 days from the date of its delivery. The 90-Day Notice further advises that the displacee will receive a subsequent *30-Day Notice to Vacate* letter that will provide a firm date by which the property must be vacated. The *30-Day Notice*, Form RA-32, will not be given until MaineDOT has legal control of the property.

The two phase 90/30-Day Notice provides the most effective consideration of displacees' need for information about required move date and offers flexibility to the Department in managing delivery of right of way for project construction.

The 90/30-Day Notices are applicable to displaced occupants of businesses, farms and nonprofit organizations as well as displaced residential occupants. Notices are also applicable to owners who are not displaced, but are required to move personal property that is within a partial taking. However, MaineDOT is not obligated to offer replacement site locations to nonresidential displacees. Best efforts in providing relocation advisory services to nonresidential displacees are required.

## **6-5 RESIDENTIAL MOVE COSTS**

### **6-5.01 Purpose**

Residential displacees are entitled to reimbursement for actual reasonable and necessary costs as determined by MaineDOT, to move personal property from the displacement to a replacement dwelling. There are several cost elements and reimbursement options available. Also, there are certain requirements to document and support claims. This Section discusses all aspects of residential moving costs.

### **6-5.02 Basic Eligibility Conditions**

Any owner or tenant occupying a residential unit who qualifies as a displaced person (definition in Section 6-1.04) and who moves from a dwelling is eligible to receive payment for moving personal property from the displacement site. The length of occupancy at the acquired property does not determine eligibility for moving expense payment. All displaced persons qualify for residential moving cost reimbursement.

The displacee has the option of a payment based on the actual, reasonable and necessary moving expenses of the move or a fixed payment that is based on the MaineDOT *Fixed Residential Moving Cost Schedule* (form RA-40).

The following will apply:

1. Single Move. The displaced person is entitled to one move, except where a subsequent move is determined by MaineDOT to be in the public interest. This would be a very unusual circumstance where a displacee would voluntarily move to temporary housing pending the availability of permanent replacement housing.
2. Reimbursement Limited to 50 Miles (80 km). There is no limitation on the distance a displaced person moves either interstate or intrastate. However, the actual cost move claim maximum is limited to the amount that would be charged for a move up to 50 miles (80 km). The Department may extend this limit on determining that the move could not be accomplished within the 50-mile (80-km) distance. This type of exception may only be allowed to the nearest comparable property available.
3. Time Limit for Filing Claim. To receive payment, a displacee must file a written claim with MaineDOT on the appropriate Department form. The claim must be filed within 18 months after the later of:
  - a. The date the displacee moves from real property, or moves their personal property from real property, or
  - b. The date of acquisition is complete and payment is made to the owner or deposited in court.

4. Payment of Claims. Moving expense payments will be made only after the move is complete unless MaineDOT determines that this would create a hardship. In hardship cases, arrangements can be made for advance payments, or the displacee and the mover and MaineDOT can arrange in advance for MaineDOT to make a direct payment to the mover.
5. Multiple Occupancy. When 2 or more occupants of a displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share of any payment that would have been made if the occupants moved together. However, if the occupants have maintained separate households within the same dwelling, the occupants may claim separate moving payments. MaineDOT will make the determination called for in this provision.

To determine separate household, MaineDOT uses several indicators including income capable of supporting separate households, eating meals separately, splitting household expenses, review of tax returns, etc.

6. Owner Retention. When an owner retains the dwelling for removal from the MaineDOT acquired site, the cost of moving the dwelling onto remainder or replacement land is not eligible for reimbursement as a part of the cost of moving personal property. However, if the displacee chooses to use the dwelling as a means of moving personal property, the cost of moving personal property may be considered eligible for reimbursement. Payment in these cases would be on a fixed schedule basis.

### **6-5.03 Eligible Moving Costs**

A displaced individual or family meeting the basic eligibility conditions above is entitled to receive a payment for moving personal property. This includes the following costs:

1. Cost associated with the preparation of moving bids;
2. Transportation costs not to exceed a distance up to 50 miles (80 km);
3. Packing, crating, unpacking and uncrating of personal property, including materials and labor costs;
4. Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;
5. Reconnection of utilities, including phone, cable and electric service;
6. Storage of personal property for a period not to exceed 12 months, unless MaineDOT determines that a longer period is necessary;

7. Insurance for the replacement value of the personal property in connection with the move and necessary storage;
8. Replacement value of property lost, stolen or damaged in the process of moving, unless by fault or negligence of the displaced person, agent or employee. This is only applicable where insurance covering the loss is not reasonably available;
9. Transportation of the displaced person including any special services (e.g., an ambulance to transport disabled persons to replacement dwelling); for a distance not to exceed 50 miles unless the MaineDOT determines that relocation beyond 50 miles is justified.
10. Other moving-related expenses that are not listed as ineligible under Section 6-5.04 that the MaineDOT determines to be reasonable and necessary.

#### **6-5.04 Ineligible Moving Costs**

The following costs are not eligible for reimbursement:

1. The cost to move any structure or other real property improvement, including swimming pools, large trees and outbuildings that were identified in the appraisal as part of the real estate; or the cost of moving any real property improvement in which the displaced person reserved ownership.
2. Interest on a loan to cover moving expenses;
3. Search costs for a replacement dwelling;
4. Any legal fees or other costs associated with preparing or with reviewing the claim for a relocation payment or for representing the claimant before the MaineDOT or in a relocation appeal before MaineDOT or the State Claims Commission.
5. Personal injury;
6. Cost of storing personal property on real property that is already owned or leased by the displaced person; and
7. Refundable Security and Utility Deposits.

#### **6-5.05 Residential Moving Expenses –**

A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods. Self-moves based on the lower of two commercial mover bids or estimates are not eligible for reimbursement under this section.

**6-5.05(a) Commercial Move.**

A commercial mover may perform an actual cost move. The following will apply:

Move Performed by Commercial Mover. If a displaced individual or family desires to have a move performed by a commercial mover, the assigned Relocation Specialist will obtain bids or estimates from two reputable moving companies. MaineDOT will pay the cost of obtaining bids or estimates, if necessary. The Specialist will insure that all bids or estimates received are based on the same move specifications and personal property inventory. The maximum MaineDOT reimbursement amount will be the lowest responsible bid or estimate.

The displaced person has the right to engage the services of any moving company. MaineDOT will pay the amount of receipted bills, not to exceed the amount of the approved low bid or estimate. Exception may be approved for unanticipated work or conditions during the move that differ from the assumptions in the estimates.

MaineDOT will make a separate payment for costs that are not included in a mover's claim (e.g., reconnection of utilities).

With prior agreement among the parties, the displacee may present an unpaid mover's bill, along with the moving cost claim form, to MaineDOT for direct payment to the mover.

**6-5.05(b) Self Move.**

Self moves are moves that may be performed by the displaced person in one or a combination of the following methods:

Actual Cost Move: A displacee may perform all or any part of a move with the displacee's own resources and be reimbursed for the actual cost up to the cost of a commercial mover. The displacee may rent equipment and purchase moving materials, such as packaging materials and boxes. Equipment rental fees should be based on actual costs and not exceed rates charged by a commercial mover. Move helpers may be hired, or friends and family members may perform the move. Hourly rates should not exceed those charged by a commercial mover. MaineDOT will reimburse actual costs incurred based on receipted bills.

Fixed Residential Moving Cost Schedule: A displaced individual or family is eligible for moving cost reimbursement based on the MaineDOT's form RA-40 *Fixed Residential Moving Cost Schedule*. The schedule amount reflects the number of furnished rooms in the dwelling unit plus basements, attics, garages and outbuildings if these spaces contain sufficient personal property as to constitute a room. The MaineDOT schedule is revised from time to time to reflect current actual costs within the State.

The Relocation Specialist should advise the displacee of the amount of the fixed schedule payment at the initial relocation visit. The displacee should also be advised of the number of rooms in the displacement dwelling. This will enable the displacee to make an informed decision as to the reimbursement option.

If the displacee elects to accept the fixed cost reimbursement based on schedule, there is no additional payment for items such as utility reconnection because these costs are included in the move cost schedule.

The displacee does not have to account for how the fixed payment schedule amount is spent. If the actual cost of move is less than the schedule amount, the displacee may retain the difference. However, there will be no additional reimbursement if the actual move cost exceeds the schedule amount.

The fixed move payment should be encouraged if it clearly would benefit the displacee. However, a commercial move option should be encouraged when individual circumstances indicate it would benefit the displacee because of lifestyle, age, disability and other personal circumstance or preference...

This fixed payment option has benefits to the Department. It is administratively simple and there is no need for the Department to secure movers' estimates, confirm actual costs incurred or process multiple claims.

#### **6-5.06 Moves from a Mobile Home**

Individuals and families who are displaced from a mobile home used as a dwelling are entitled to be reimbursed for the same eligible moving costs as listed in Section 6-5.03 for other residential moves. A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the same methods used by other residential moves, that is a commercial move or a self-move that can be one or a combination of an actual cost move or a fixed residential moving cost payment based on the MaineDOT's moving cost schedule. Self-moves based on the lower of two commercial mover bids or estimates are not eligible for reimbursement under this section. Required documentation is the same as for other residential moves.

Personal property in mobile homes may be moved together with the mobile home as a unit. Payment may be made on the basis of form RA-40 *Fixed Residential Moving Cost Schedule* for these moves.

If an owner-occupied mobile home is moved as personal property and used as the replacement dwelling, then the displacee is also eligible for the following expenses:

1. The reasonable cost of disassembling, moving and reassembling any appurtenances attached to the mobile home, such as porches, decks, skirting, and awnings which were not acquired, anchoring of the unit and utility "hookup" charges.
2. The reasonable cost of repairs and /or modifications so that the mobile home can be moved and/or made decent safe and sanitary.
3. The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or if the MaineDOT determines that the payment of the fee is necessary to effect relocation.





## **6-6 NONRESIDENTIAL MOVING COSTS**

### **6-6.01 General**

Reimbursement for non-residential moving costs are established by Federal Regulation in 49 CFR Part 24. States have the option of increasing the level of benefits available to displacees provided those increases are passed by the state legislature and written into law. The 122<sup>nd</sup> Maine Legislature has approved increasing the level of benefits to non-residential displacees as follows:

- 23 MRSA Section 244 (1)(c) was revised to increase search reimbursement maximums from \$1000 to \$2500,
- 23 MRSA Section 244(1)(d) was revised to increase reestablishment expenses expense reimbursement maximums from \$10,000 to \$20,000,
- 23 MRSA Section 244 (3) was revised to increase the maximum fixed payment for business or farm displacements from \$20,000 to \$100,000.

Authority for federal reimbursement for these increased payments is found in 23 CFR 710.203 (b)(2)(ii).

It should be noted that while FHWA may participate in these increased limits under 23 CFR 710.203, other federal agencies such as FAA, FTA, and FRA may not have statutory provisions that allow them to participate above the federal limits.

Any business, farm operation or nonprofit organization which qualifies as a displaced person is entitled to receive payment for the following categories of actual moving expenses and related costs associated with moving that the MaineDOT determines to be reasonable and necessary:

1. Moving costs for relocating all personal property including machinery and equipment including disconnect/reconnect costs;
2. Related nonresidential business expenses for:
  - a. connection from available nearby utilities from the right of way to replacement improvements;
  - b. professional services to determine replacement site suitability for the business operation prior to purchase or lease;
  - c. impact fees or one time assessments for heavy utility usage, as determined necessary by the MaineDOT.
3. Search costs for a replacement location not to exceed \$2,500; and
4. Reestablishment expenses not to exceed \$20,000.

Use MaineDOT's form RA-46 *Moving Expenses of Business, Farm or Non-Profit Organization* for all of the above non-residential moving cost categories. In cases where the displaced entity requests an advance moving expense payment and where the MaineDOT approves the advance payment use MaineDOT's form RA-46A *Advance Payment of Moving Expense for Business, Farm or Non-Profit Organization*.

All moving expenses must be actual, reasonable and necessary. To insure this, the assigned Relocation Agent will monitor the process of conducting inventories, developing move specifications, securing commercial moving bids and proposals, and observing the conduct of the move. Emphasis will be directed toward moves that are of a complicated nature or that involve a substantial expenditure.

As an alternative to the actual cost reimbursement as explained above, the displaced business, farm or nonprofit organization that meets certain criteria may choose to receive a fixed payment in lieu of actual moving expenses not less than \$1,000 or more than \$100,000. The specific amount is based on the net income of the displaced business, farm or nonprofit organization.

The reimbursable actual moving expenses and the fixed payment in lieu of moving expenses are explained in detail in the following paragraphs.

#### **6-6.02 Key Terms**

See Section 6-1.05 for definitions of business, small business and nonprofit organization. The term "business" in Section 6-6 also applies to farms and nonprofit organizations.

#### **6-6.03 Criteria – Actual, Reasonable, Necessary**

Nonresidential moves are reimbursed on the basis of costs incurred in moving. The basic criteria that apply to moving costs are that they be actual, reasonable and necessary. Actual moving and related expenses are factual and documented. MaineDOT determines if costs are reasonable and necessary. These are defined as follows:

1. Actual. True incurred costs as opposed to estimated or potential costs. The actual cost of a move is indicated by a receipt, invoice or canceled check.
2. Reasonable. Not extreme or excessive, not conflicting with reason. This is a judgment determination in response to the question "Would most people agree that something is reasonable given all the facts?"
3. Necessary. Logically unavoidable costs. Are the costs obligatory? Could the move have been conducted in a way that the cost factors would not have been incurred?

The 3-part test and, in particular, the elements of reasonableness and necessity, can be difficult to implement in certain cases. However, they are basic program criteria and Relocation Agents are obligated to apply them to business relocation claims. It is important to apply them

consistently and fairly. One way to achieve this is to discuss borderline situations with Property Office management.

#### **6-6.04 Business Moving Process – Contract Move**

Business relocations are varied and may be very complex. Business operators are understandably concerned about the security of their livelihood, the welfare of employees, continued service to clientele and whether they will receive adequate payment for relocation costs. In order to meet the challenges of business relocations, the Relocation Agent should follow a standard process in administering relocation benefits. This will insure fair and equitable treatment of displacees, confirm the reasonableness of costs claimed and encourage an atmosphere of mutual trust and confidence in dealing with displacees.

The following process is recommended for business moving by means of a contract mover:

1. Advise the Displacee. Provide complete information to the business, farm or nonprofit operator about benefits and options. Give the business owner a copy of the relocation brochure marked to indicate relevant sections. Secure information about the business and find out the owner's concerns, priorities and intentions. Provide assistance as the owner desires and needs. Secure help and advice from outside sources as necessary. Advise the displacee on the forms of documentation that are required by MaineDOT to support claims for payment.

The displacee should be advised of the requirements to:

- a. prepare an inventory, see Item No.3,
  - b. notify MaineDOT of the scheduled date of move, and
  - c. permit MaineDOT to monitor the move and inspect the displacement and replacement sites.
2. Make or Confirm Personal/Real Property Determinations. Many businesses have equipment and fixtures that may not be easily classified as real property or personal property. The realty/personalty determination in the Appraisal Report should specify these items and their classification. The Agent should review the status of items with the displacee so there is no misunderstanding as to the items that must be relocated as opposed to items that will be paid and acquired by MaineDOT. Any items that are not clearly classified should be brought to the attention of the Relocation Manager and Senior Property Officer for determination.
  3. Perform Inventory. The business operator must provide a certified inventory of personal property to be moved, unless a fixed payment option under Section 6-6.12 is selected. The Relocation Agent should assist in the inventory or monitor or review it to the extent necessary to confirm that it is accurate and complete. If the inventory fluctuates, it should be reconfirmed before the move takes place to insure that the move claim reflects the facts on the site at date of move.

4. Develop Moving Specifications. Specifications define the manner in which the move is performed. They specify the time span for performing the move and identify items needing special handling, including disconnection and reinstallation work. Move specifications also identify special trades required (e.g., plumbing, millwrights). The development of specifications will insure that all movers submit proposals (bids or estimates) on the same basis. Also, specifications will avoid misunderstandings about reimbursement or the manner in which the move is performed. The move specifications should reference the property inventory.

Very small business relocations may not require formal written specifications. However, the Relocation Agent should always thoroughly discuss the details of the performance of the move with the business operator before proposals are secured from movers.

5. Secure Moving Proposals. Moving bids or estimates should be secured from at least two qualified commercial movers. The movers should be provided with the inventory and specifications and instructed to determine a price based on the specifications, but they should also identify any options or observed inconsistencies.

The Relocation Agent should be aware that an estimate is not the same as a bid. Most proposals received for relocation are not bids, in that they are not secured under competitive circumstances in which the job is contracted to the low responsible bid. The Agent and the displacee should be alert to the possibility that movers who think they have low probability of securing the work may not provide a reasonably priced proposal. In unusual circumstances of a high-cost move in which it is not feasible to obtain timely or reasonable proposals, MaineDOT may pay a fee for estimates by a qualified mover consultant without expectation that the estimator will perform the move.

6. Monitor the Move. The Relocation Agent is responsible for personally monitoring the performance of the move, other than small low-cost relocations. This means that the Agent will be on site when the move is being performed. The responsibilities include confirming that the move is performed in accordance with agreed specifications and that the inventory moved reasonably conforms to that on which the move cost proposals were secured. The Agent will also confer with the displacee about any concerns or questions involving claims for payment.

On very complex moves where there are significant costs assigned in the specifications to special work (e.g., anchoring machinery, constructing pits and pads, performing a premium time move), the work should actually be performed or be deducted from the claim. Insure this is clear to the parties before the proposals are secured.

If work develops during the performance of the move that is necessary, but was not anticipated in the specifications, the Relocation Agent can verify the need and

reasonableness of the cost for reimbursement. This should occur infrequently on a well-planned relocation.

#### **6-6.05 Business Moving Process – Self Move**

A displacee may elect to take full responsibility for the move and be paid an amount not to exceed the lower of two reasonable and responsible bids or estimates. Normally, under this provision, MaineDOT will pay the out-of-pocket costs to the displaced business operator. This will include the following:

1. Cost of packing materials and move equipment;
2. Rental cost of equipment and vehicles;
3. Salary or wages of displaced business employees engaged in move activities;
4. Cost of outside specialists or trades required for the move; and
5. Reinstallation costs for equipment, telephones, computers, etc.

Documentation required for the above items consists of receipted bills and logs showing employee time and cost. Employee overhead may be included in the claim.

The process defined in Section 6-6.04 for contract moves also applies to self-moves.

#### **6-6.06 Eligible Moving Costs**

The following items are eligible for reimbursement as moving costs if actually incurred during the moving process and if the MaineDOT determines they are reasonable and necessary:

1. Transportation costs for moving personal property. The transportation charges will normally be reimbursed for up to the first 50 miles (80 km) of travel. When the move exceeds 50 miles (80 km), all estimates will be prepared and claims paid based on a move of 50 miles (80 km). Similarly, the mover's bill must be detailed to show transportation costs for the first 50 miles (80 km) as well as the cost for the remainder of the distance. When MaineDOT determines that the business cannot be relocated within a 50-mile (80-km) limit, reimbursement will be allowed to the nearest adequate and available site.
2. Packing, crating, unpacking and uncrating the personal property.
3. Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property including substitute personal property. This includes connections to utilities available within the building. It also includes modification of the personal property necessary to adapt it to the replacement structure including those mandated by governmental law, code or ordinance, the replacement site or the utilities at the replacement site, and

modifications necessary to adapt the utilities at the replacement site to the personal property. Expenses for providing utilities from the right of way to the building or improvement are excluded as a move cost but may be eligible as a related nonresidential expense; see Section 6-6.10.

4. Storage costs, including moving property in and out of storage. Storage cost reimbursement is limited to 12 months unless MaineDOT determines that a longer period is necessary. Costs for storage of personal property on a site owned, leased or controlled by the displaced person are not eligible for reimbursement.
5. Insurance for replacement value due to the loss, theft or damage to the personal property in connection with the move and necessary storage. Where insurance is not reasonably available, the replacement value of property lost, stolen or damaged in the process of moving may be paid unless the loss results from fault or negligence of the displaced person or his or her agent or employee.
6. Cost of any license, permit or certification required at the replacement location. The payment will be based on the remaining useful life of the existing permit, license or certification.
7. Professional services, which the MaineDOT determines to be actual, reasonable and necessary, for planning the move and moving and installing personal property at the replacement location. This can include the time of the displacee or employees provided the claim is supported by time logs and MaineDOT monitoring.
8. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation that is not relocated from the displacement site; See section 6-6.09 for further information on this benefit.
9. Purchase of substitute personal property to replace an item of property that is used as part of a business or farm operation that is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site. See section 6-6.09 for further information on this benefit.
10. Cost of re-lettering signs that are made obsolete as a result of the move.
11. Replacement cost of stationery, advertising and promotional items on hand at the time of the move that are made obsolete by the relocation.
12. The reasonable cost incurred in attempting to sell an item that is not to be relocated.
13. *Low value/high bulk.* When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the MaineDOT, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new

business location. Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the MaineDOT.

14. Other moving-related expenses that are not listed as ineligible in Section 6-6.07, as MaineDOT determines to be reasonable and necessary.

#### **6-6.07 Ineligible Moving Expenses**

The following items are **not eligible** for reimbursement as moving costs:

1. Any additional expense incurred because of operating at a new location except as provided as a business reestablishment expense under 6-6.11, (h), (1-4);
2. Cost of moving structures, improvements or other items of realty retained by the owner;
3. Interest on loans to cover moving expenses;
4. Loss of goodwill;
5. Loss of trained or skilled employees;
6. Loss of business or profits;
7. Personal injury;
8. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the MaineDOT ;
9. Physical changes to the real property at the replacement location of a business, farm operation or nonprofit organization, except as provided under section 6-6.06, 3, eligible actual moving expenses and under section 6-6.11,1 eligible reestablishment expenses;
10. Costs for storage of personal property on real property already owned or leased by the displaced person; and
11. Refundable utility and security deposits.

#### **6-6.08 Search Expenses**

A displaced business, farm operation or nonprofit organization is entitled to reimbursement for actual expenses and time spent in searching for a replacement location, as the MaineDOT

determines to be reasonable. This payment may not exceed \$2,500. These expenses may include:

1. Transportation. A mileage rate determined by MaineDOT will apply to the use of an automobile.
2. Meals and lodging away from home will be paid on a per diem basis.
3. Time. Time spent searching will be reimbursed based on actual salary or earnings. In the case of a nonprofit organization, the person performing the search must be a paid employee of the organization.
4. Fees. Fees paid to a real estate agent or broker to locate a replacement site are reimbursable. This does not include fees or commissions related to the purchase of the site.
5. Time spent in obtaining permits and attending zoning hearings; and
6. Time spend negotiating the purchase of a replacement site based on a reasonable, actual salary or earnings.

Documentation for a search expense claim will include expense receipts and logs of times, dates and locations related to the search and any receipts or paid invoices for services or travel.

#### **6-6.09 Substitute Personal Property and Direct Loss of Personal Property**

A business, farm or nonprofit may suffer an economic loss if the owner elects not to relocate an item of property to the replacement site. This may occur if the item is at the end of its useful life, is obsolete or is so installed so that it cannot be moved economically. In any of these circumstances, it may be practical and feasible not to move the item(s), but to abandon it, or sell it as salvage and replace it with a newly purchased item at the replacement site. Alternatively, the business may decide not to replace the item if it is not critical to continued business operations after relocation.

MaineDOT will pay the displacee for the cost of replacing property that was not moved (substitute personal property) or for loss due to salvage sale or abandonment of the item (direct loss of personal property). The maximum amount reimbursed will be the estimated cost of relocating the item(s) not moved, including detach and reinstall expenses.

The following rules apply to substitute personal property and direct loss of personal property:

1. Substitute Personal Property. If an item of personal property that is used in connection with the business is not moved but is replaced with an item at the new location that serves the same or a similar function, the payment will be the lesser of:

- a. The replacement cost minus the net proceeds of the sale of the item from the displacement site (trade-in value may be substituted for net proceeds of sale where applicable); or
  - b. The estimated cost of moving the item to the replacement site but not to exceed 50 miles (80 km).
2. Direct Loss of Personal Property. If the item is not replaced in the reestablished business, the payment will be the lesser of:
  - a. The difference between the market value of the item in place for continued use at its location prior to displacement, or less its net proceeds of its sale from the displacement site; or
  - b. The estimated cost of moving the item to the replacement site, but not to exceed 50 miles (80 km).

If a sale is not completed under Items 1a or 2a above because no offer is received for the property, the property may be abandoned. Payment for the actual direct loss of that item may not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item 50 miles (80 km), whichever is less, plus the cost of the attempted sale, irrespective of the cost to MaineDOT of removing the item.

The owner must attempt to sell the item that was not relocated from the displacement site as a condition of claiming the direct loss or substitute property payment. MaineDOT may exempt a displacee from this requirement if the Department determines that the item has no net market value. In this circumstance, MaineDOT will not charge the displacee for removal from the site for project construction.

It is important to fully support the estimates required for the direct loss or substitute property provisions. It may be necessary to employ a specialty appraiser to determine values for continued use or to estimate detachment and reinstallation costs of large or complex items of equipment.

The direct loss, or substitute property reimbursement, should be fully explained to business operators who may benefit from its provisions. This includes businesses that have older machinery and equipment, custom fixtures (personal property) that would not be appropriate in a replacement site, or equipment that has been rendered obsolete by wear, or by more efficient or cost-effective items on the market.

#### **6-6.10 Related Nonresidential Eligible Expenses**

The following expenses in addition to those provided in section 6-6.06 for moving personal property of a displaced business or farm operation are reimbursable if the MaineDOT determines that they are actual, reasonable and necessary:

1. Connection of available nearby utilities from the right of way to improvements on the replacement site.
2. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, marketing and feasibility studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the MaineDOT's discretion a reasonable pre-approved hourly rate may be established. If a question arises as to what is a "reasonable hourly rate", the MaineDOT should compare the rates of other similar professional providers in the area.
  - a. **Reimbursable expenses related to soil testing-** When the person whose business operation is displaced has a written and accepted purchase agreement with an inspection termination clause, field activities, soil sampling and test pitting; lab analysis; and a report are part of due diligence for the displacee to determine the suitability of site and are reimbursable, if MaineDOT determines that such activities are actual, reasonable and necessary. Soil testing might lead to the decision for additional soil testing in certain cases and MaineDOT's agreement to reimburse for additional soil testing should be undertaken based on information provided to MaineDOT in the initial report and the MaineDOT's determination that the additional testing is reasonable and necessary.
  - b. **Non-reimbursable expenses-** A Voluntary Response Action Plan (VRAP) is a very carefully crafted application and document for a scope of work for remedial measures to Maine DEP to release the applicant(s) from liability on a site. The VRAP is prepared after the applicants' environmental consultant has completed the environmental site assessments (ESAs) and the nature and extent of the contamination has been characterized. The VRAP may propose remediation and clean-up of the site and may require Maine DEP to monitor the remediation. These activities go beyond the scope of determining the suitability of the site by the person whose business is displaced. MaineDOT will not reimburse for any of the following-
    1. VRAP coordination by an environmental consultant or others,
    2. Preparation of a VRAP application,
    3. Maine DEP fees, and

4. Remediation and clean-up costs for the site.
  5. MaineDOT will not reimburse for field activities, soil sampling and test pitting; lab analysis; and a report when the person whose business operation is displaced does not have a written and accepted purchase agreement with an inspection termination clause.
3. Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by the MaineDOT.

#### **6-6.11 Reestablishment Expenses**

A small business, farm or nonprofit organization may be eligible to receive a payment, not to exceed \$20,000, for expenses that are actually incurred in reestablishing operations at a replacement site. The following describes the criteria for reestablishment expenses:

1. Eligible Reestablishment Expenses. Reestablishment expenses must be reasonable and actually incurred and may include the following items:
  - a. Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance (e.g., special wall or floor materials required for a restaurant kitchen);
  - b. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business. This includes most “build out” type costs of modifying interior spaces;
  - c. Construction and installation costs for exterior signing to advertise the business;
  - d. Redecoration or replacement of soiled or worn surfaces at the replacement site (e.g., paint, paneling, carpeting);
  - e. Licenses, fees and permits, when not paid as part of moving expenses;
  - f. Feasibility surveys, soil testing and marketing studies to determine the suitability of a site to the business operation;
  - g. Advertisement of replacement location;
  - h. Increased costs of operation during the first 2 years at the replacement site for items such as:

- 1) Lease or rental charges,
    - 2) Personal or real property taxes,
    - 3) Insurance premiums, and/or
    - 4) Utility charges, excluding impact fees;
  - i. Other items that MaineDOT considers essential to the reestablishment of the business.
2. Ineligible Reestablishment Expenses. Following is a non-exclusive listing of reestablishment expenditures that are not eligible for reimbursement as reestablishment expenses:
- a. Purchase of capital assets (e.g., office furniture, filing cabinets, machinery, trade fixtures);
  - b. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation;
  - c. Interest on money borrowed to make the move or purchase the replacement property; and
  - d. Payment to a part-time business in the home that does not contribute materially to the household income. See Section 6-1.12 (e) for a definition of “contribute materially to income.”

#### **6-6.12 Fixed Payment in Lieu of Moving Expenses**

A displaced business (including a farm operation or non-profit organization) may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, search expenses and actual reasonable reestablishment expenses. Except for payment to a non-profit organization it is a lump-sum payment equal to the average annual net earnings before taxes of the displaced business or farm operation, but not less than \$1,000 nor more than \$100,000 maximum.

The fixed payment is an alternative to all other relocation payments for which the displacee would otherwise be eligible. The recipient of a fixed payment is not eligible for actual moving costs and non-residential related expense, search expense or reestablishment expense reimbursements. The following criteria apply to fixed payments:

1. Eligibility Requirements. For an owner of a displaced business to be entitled to a fixed payment in lieu of actual moving expenses, MaineDOT must determine that:

- a. The business owns or rents personal property that must be moved, and for which an expense would be incurred in a move, and the business vacates or relocates from its displacement site;
  - b. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless MaineDOT determines, for a stated reason, that the business will not suffer a substantial loss of its existing patronage.
  - c. The business is not part of a commercial enterprise having more than three other entities that are not being acquired by MaineDOT, and that are under the same ownership and are engaged in the same or similar business activities. For purposes of this rule, any remaining business facility that did not contribute materially (see Item #1e) to the income of the displaced person during the two taxable years prior to displacement will not be considered "other entity".
  - d. The business is not operated at the displacement dwelling or site solely for the purpose of renting the dwelling or site to others.
  - e. The business contributed materially to the income of the displaced person. Contribute materially means that during the two taxable years prior to the taxable year in which displacement occurs, or during another period as MaineDOT determines to be more equitable, a business.
    - 1) Had average annual gross receipts of at least \$5,000; or
    - 2) Had average annual net earnings of at least \$1,000; or
    - 3) Contributed at least 33 1/3% of the owner or operator's average annual gross income from all sources.
2. Determining the Number of Businesses. In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors will be considered, including the extent to which:
- a. The same premises and equipment are shared.
  - b. Substantially identical or interrelated business functions are carried out and business and financial affairs are co-mingled.
  - c. The entities are held out to the public and to those customarily dealing with them as one business.
  - d. The same person, or closely related persons, own, control or manage the affairs of the entities.

The Department will make a decision after consideration of all of the relevant indicators and so advise the displacee.

3. Fixed Payment Amount. The fixed payment amount is calculated as the average annual net earnings of the business for the two years preceding the year in which displacement occurs. The term “average annual net earnings” of a business or farm operation means 1/2 of all net earnings before Federal, State and local income taxes, during the two tax years immediately preceding the tax year in which it is displaced.

If the two years immediately preceding displacement are not representative, MaineDOT may use a period that would be more equitable. For instance, proposed construction may have caused a recent outflow of business customers, resulting in a decline in net income for the business.

Average annual net earnings include any compensation that is paid by the business to the owner, the owner’s spouse and dependents during the two-year period. In the case of a corporate owner of a business, earnings include any compensation that is paid to the owner of a majority interest in the corporation and the majority owner’s spouse and dependents. For the purpose of determining majority ownership, stock held by all members of the household and their dependents would be treated as a single unit.

If the business, farm or nonprofit organization was not in operation for the full 2 taxable years prior to displacement, net earnings will be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate.

4. Fixed Payment – Farm Operation

A displaced farm operation may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses in an amount equal to its average annual net earnings computed as described in paragraph 3 above. In the case of a partial acquisition of land that was a farm operation before the acquisition, the fixed payment will be made only if MaineDOT determines that:

- 1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- 2) The partial acquisition caused a substantial change in the nature of the farm operation.

5. Fixed Payment - Nonprofit Organizations. For a nonprofit organization, “existing patronage” means membership or clientele. A nonprofit organization is assumed to meet this test, unless MaineDOT determines otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses. Gross revenues for a

nonprofit organization include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enable the nonprofit organization to operate. Administrative expenses are for administrative support (e.g., rent, utilities, salaries, and advertising) and other similar items as well as fundraising expenses. Operating expenses are not included in administrative expenses.

6. Documentation for Fixed Payment Claim. For the owner of a business, farm or nonprofit organization to be entitled to the fixed payment, the owner must provide information to support its net earnings. State or Federal tax returns for the two years before the year of displacement are the best source of this information. Other documentation sources may include financial statements certified by the displacee, the displacee's accountant or displacee's attorney may be accepted as supplementary evidence of earnings. The owner's statement alone would not be sufficient if the amount claimed exceeded the minimum payment of \$1,000. Use MaineDOT form RA-43 *Fixed Payment in Lieu of Actual Non-Residential Expenses* to claim payment for a non-residential fixed payment.



## **6-7 PERSONAL PROPERTY ONLY MOVE**

### **6-7.01 General Eligibility Conditions-**

A person who is required to move personal property from real property, but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization is eligible for relocation cost reimbursement. Examples of personal property only moves might be: personal property that is located on the portion of property that is being acquired from a partial acquisition but the business or residence will not be acquired and can still operate after the acquisition such as a sign or yard light; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired.

To be eligible for a move payment, the personal property must be within the area acquired. No moving cost can be paid for personal property that is an encroachment partially or entirely within the limits of the existing right of way or is an illegal installation or illegally placed.

For a non-residential personal property only move, the owner of the personal property has the option of moving the personal property by using a commercial mover or a self-move. If a question arises concerning the reasonableness of an actual cost move, the MaineDOT may obtain estimates from qualified movers to use as the standard in determining the payment.

For uncomplicated low cost moves of personal property only, the MaineDOT may use a move cost determination as the basis for payment to the property owner. The move determination will be prepared by a qualified MaineDOT relocation agent based on previous payments for similar type moves adjusting for the unique circumstances of the immediate case.

### **6-7.02 Eligible Expenses-**

The following expenses are eligible for reimbursement for a personal property only move.

1. Transportation of the personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the MaineDOT determines that relocation beyond 50 miles is justified.
2. Packing, crating, unpacking and uncrating of the personal property.
3. Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, machinery, equipment and other personal property including substitute personal property. This includes connections to utilities available within the building for businesses. It also includes modification to the personal property including those mandated by governmental law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

4. Storage costs of the replacement property, including moving property in and out of storage. Storage cost reimbursement is limited to 12 months unless MaineDOT determines that a longer period is necessary. Costs for storage of personal property on a site owned, leased or controlled by the displaced person are not eligible for reimbursement.
5. Insurance for replacement value due to the loss, theft or damage to the personal property in connection with the move and necessary storage. Where insurance is not reasonably available, the replacement value of property lost, stolen or damaged in the process of moving may be paid unless the loss results from fault or negligence of the displaced person or his or her agent or employee.
6. Other moving-related expenses that are not listed as ineligible in Section 6-6.07, as MaineDOT determines to be reasonable and necessary.
7. *Low value/high bulk.* When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the MaineDOT, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the MaineDOT.

#### **6-7.03 Ineligible Expenses**

1. Personal property located entirely or partially within the existing right of way or personal property relocated partially or entirely within the full width of the new right of way and installations and fixtures restricted under 23 MSRA 1401-A which prohibits installation in, upon or near any state or state aid highway, located as follows:
  - a. Within the full width of the right-of-way of any state or state aid highway as laid out by the State, the county or the town;
  - b. Within 33 feet of the center line of any state or state aid highway. This paragraph does not apply to installations or other property in existence on August 6, 1949;
  - c. Within 20 feet from the outside edge of any of the paved portion of any state or state aid highway having more than 2 travel lanes and having a total paved portion in excess of 24 feet in width. This paragraph does not apply to installations or other property in existence on September 1, 1955;
2. Relocation expenses of on-premise signs that do not meet the requirements of 23 MRSA §1914 and in particular the location of an on-premise sign that is placed:

- a. Within 33 feet of the center line of any public way if the highway is less than 66 feet in width;
- b. Within 20 feet from the outside edge of the paved portion of any public way with more than 2 travel lanes and a total paved portion in excess of 24 feet in width;  
or
- c. Within the full width of the right-of-way of any public way.

Paragraphs a and b shall not apply to signs erected before September 1, 1957.

3. Cost of moving structures, improvements or other items of realty retained by the owner;
4. Interest on loans to cover moving expenses;
5. Loss of goodwill;
6. Loss of trained or skilled employees;
7. Loss of business or profits;
8. Personal injury;
9. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the MaineDOT ;
10. Physical changes to the real property at the replacement location of a residence, business, farm operation or nonprofit organization, except as provided under section 6-7.02, 3, eligible actual moving expenses.
11. Costs for storage of personal property on real property already owned or leased by the displaced person; and
12. Refundable utility and security deposits.

#### **6-7.04 DETERMINATION- PERSONAL PROPERTY or REAL ESTATE FIXTURE**

Often the determination of whether an improvement is personal property or a real estate fixture is not addressed before the valuation process and is left to the appraiser to make a determination. That can provide less than adequate time for data gathering, owner involvement and coordination with the Property Office. . Ideally, early in the project development process the

right of way team member and Senior Property Officer should identify items within the acquisition and construction limits to determine if an object is personal property or if it is an appurtenance that has become a real estate fixture. Unusual items should be determined in consultation with the Relocation Manager. As a general rule, if an item would generally be expected to pass with the property when title is transferred, it should be considered as an appurtenance and real estate fixture and not as personal property.

The *Dictionary of Real Estate Appraisal, 4<sup>th</sup> Edition*, offers the following relevant definitions:

1. **“Personal Property**
  - a. Identifiable tangible objects that are considered by the general public as being “personal,” for example, furnishings, art work, antiques, gems and jewelry, collectibles, machinery and equipment; all tangible property that is not classified as real estate.
  - b. Consisting of every kind of property that is not real property; movable without damage to itself or the real estate...”
2. **“Appurtenance-** Something that has been added or appended to the property and has since become an inherent part of the property; usually passes with the property when title is transferred.”
3. **“Fixture-**
  - a. An item that was once personal property but has since been installed or attached to the land or building in a rather permanent manner so that it is regarded in law as part of the real estate.
  - b. Attached improvements that can be real or personal property. If attached to the realty in such a manner that its removal would damage the real property or the fixture, the fixture is realty. If the fixture is removable without damage, it is generally considered personal property.
  - c. An item of equipment that, because of the way it is used, the way it is attached, or both, has become an integral part of a building or other improvement. A fixture, such as a bathtub is classified as real property, but trade fixtures (fixtures used in the conduct of business) are classified as personal property.

#### **6-7.05 CONDITIONS FOR REIMBURSEMENT PERSONAL PROPERTY ONLY MOVE**

To be eligible for relocation reimbursement personal property must not be an encroachment within the existing right of way and the following conditions must occur:

1. the personal property must be within the acquisition area on the earliest of either the initiation of negotiations or the date a notice of intent to acquire letter is delivered; and
2. the personal property is subsequently removed; and
3. the real property is subsequently acquired.

If the personal property is relocated after a MaineDOT form RA-41a *Personal Property Relocation Eligibility Notification Letter* is delivered, then the owner of personal property is eligible for a payment even though the real property is not subsequently acquired, unless, before the personal property move, a notification that the acquisition will not occur and the personal property need not be removed is delivered to the owner of personal property either by personal delivery or by certified mail.

#### **6-7.06 PERSONAL PROPERTY ONLY MOVE PROCESS**

Typically the project negotiator will act as the relocation agent for personal property only moves, in conjunction with the acquisition of the real property. The negotiator has the responsibility to complete the relocation process for personal property only moves regardless of whether the negotiator is the permanent program/team negotiator, a fee contract negotiator or a fill-in MaineDOT employee such as a survey or construction employee. Contractual obligation for fee contract negotiators and assignments for fill-in employees should make this responsibility clear to the assigned negotiator.

As early as possible in the project development process, the project right of way team member and the Senior Property Officer study the plans and address each item within the acquisition area to determine if it is to be treated as personal property or an appurtenance to be appraised with the real estate. A file memo should be generated listing each item as either personal property or real property with a copy to the Appraiser for the project and the Relocation Manager in the Property Office. Consultation with the Relocation Manager should be undertaken when there is a question about whether an unusual item is personal property or real property.

Often the determination that an item will be acquired will not be known until late in the process when the right of way plan is complete and the project parcels are ready for valuation. It is still important that the right of way team member and Senior Property Officer address each item as to whether it is personal property or an appurtenance to be appraised with the real estate.

Often individual components must be considered individually. For example a planter and shrub/flower bed are normally be valued as an improvement within the acquisition and if that planter and shrub/flower bed surrounds an on-premise business sign the sign might be considered personal property eligible for relocation while the planter shrub/flower bed should be valued as an improvement to the realty since it is an inherent part of the property that would be expected to pass with title to the property and which cannot be moved without damage to itself or the real estate.

In determining if an item is personal property or real estate, right of way personnel should be sensitive to both the owner's needs and the MaineDOT's need to deliver a project in a cost effective manner. For example, a sign from a partial acquisition might be treated as personal property and relocated to remaining land owned or leased by the sign owner, but if the sign has significant depreciation it may be in the owner's and the MaineDOT's interest to acquire the sign as an improvement. Often items such as signs, yard lights, canopies and fuel dispensing equipment, etc. are transferred with title to the property in a private sale and in the instance of a

total acquisition these same items are best considered as improvements acquired and paid as part of the acquisition rather than as personal property that the owner may not intend to relocate and where the cost of relocation would reasonably be expected to exceed the value in place. Likewise, in the instance of a partial taking which results in a change in the highest and best use of the remaining property, items within the acquisition such as signs, yard lights, canopies and fuel dispensing systems may no longer contribute to the new highest and best use and the owner may not be able to relocate these items to a new location so the best course of action is to pay for these improvements as part of the acquisition. Also, such items that are part of the remainder, where there is a change of highest and best use, should be considered as an improvement when considering severance damage to the remainder so that the owner is adequately compensated.

1. **Start a relocation contact file.** The negotiator should start a relocation file for each owner of personal property that is eligible for relocation. The negotiator should use a copy of form **RA-20 Relocation Contact Summary** for each owner of personal property.
2. **Notify owner of: eligibility for relocation of personal property; and process.** Each owner of personal property should be given letter stating the items of personal property eligible for relocation, the stationing of each item and the additional offset that the item needs to be relocated in order to be relocated outside of the acquisition area and be eligible for a relocation payment. The negotiator will use form **RA-41a Personal Property Relocation Eligibility Notification Letter**. A copy of the letter will be provided to the owner in person whenever possible or by certified mail if it is not possible to meet with the owner in person. With the letter the negotiator should explain the owner's eligibility for benefits, payments that the owner may be entitled to receive, method for application for payments and the appeal process. The negotiator should provide a copy of the **Moving Expense for Advertising Signs Brochure** to the owner in addition to explaining all of the above.
3. **Delivery of 90-day assurance notice letter.** The negotiator will prepare MaineDOT form **RA-31 90-day Assurance Notice Letter** for each owner of personal property that is required to be relocated from the proposed acquisition. The 90-day notice cannot be delivered prior to the earlier of the initiation of negotiations or the issuance of a form **RA-21 Notice of Intent to Acquire Property Letter**. The notice of intent to acquire is only to be issued when the owner indicates that they wish to begin the relocation process before the initiation of negotiations and it is not intended to allow the MaineDOT to accelerate the project timetable. Normally the **RA-31 90-day Assurance Notice Letter** will be delivered to the owner of personal property at the initiation of negotiations by the negotiator. The 90-day notice is to be delivered in person whenever possible and by certified mail when personal delivery is not possible. When the personal property to be relocated is owned by someone other than the parcel owner, the parcel owner will be given a copy of the 90-day notice that was provided to the personal property owner.
4. **Obtain bids for moving personal property.** Two bids for relocating each item of personal property need to be obtained. Sometimes it is not possible to obtain 2 bids and where only one bid can be reasonably obtained it may suffice. The MaineDOT will pay

the lesser of either the lowest approved bid price or the actual cost of the work performed. Each owner of personal property should be encouraged provide helpful information to assist in successfully relocating eligible personal property and in obtaining bids for moving personal property. Often, the owner may know of and trusts contractors that have installed the items originally and the owner is more comfortable with the process if fully involved with the process. Where the owner is unable or is unwilling to obtain 2 bids for relocation of personal property, the negotiator is responsible for obtaining bids for relocation.

5. **Approval of bids.** All bids must be reviewed by the MaineDOT before approving a low bid for actual work. Once a bid had been approved the owner should be notified. The negotiator will use form ***RA- 41b Personal Property Relocation Bid Amount Approval Letter*** to notify the owner of the approved amount, the name of the contractor and the date by which the work is to be completed. The date of completion of work cannot be sooner than the date specified in form ***RA-32 Notice to Vacate Letter***. The owner need not use the contractor submitting the low bid for relocation of the items, but the MaineDOT will not pay more than the approved minimum bid if a different contractor is used or the owner performs the work personally. The owner of personal property may choose to perform the work personally and the MaineDOT may pay the owner for the relocation work with proper documentation for actual costs of salary, materials and rental equipment used for the move in an amount not to exceed the approved low bid. A negotiated self-move may be worked out in advance with the owner of non-residential personal property that is based on the lower approved bid less profit and other costs as MaineDOT determines to be appropriate.
6. **30-Day Notice to Vacate.** The negotiator will provide the owner of personal property a completed copy of MaineDOT form ***RA-32 Notice to Vacate Letter*** in person if possible or by certified mail if personal delivery is not possible. The 30-daynotice cannot be delivered to the owner sooner than the date that the MaineDOT acquires title to the property on which the personal property is located. The date specified in the letter by which the owner must have the personal property removed should be reasonable given the timetable for a contractor to relocate the personal property and the season. Often relocation of items which involve in-ground work is difficult in cold weather when frozen ground is present. If winter work is necessary the negotiator should be certain that the approved bid amount will cover the additional cost of winter work. \*Note: Frequently, when project construction is scheduled for a spring kick-off, it is tempting to delay personal property relocations until spring. This can be a serious miscalculation since relocation of utility poles and installations may occur during winter months and may be delayed by the failure to relocate personal property as early as practicable.
7. **Submittal of claims for payment.** The negotiator will complete a copy of the claim form ***RA-47 Moving Expenses for Personal Property Only*** which will accompany the bid approval letter with a return envelope to the attention of the negotiator. The negotiator will review the claim form and supporting documentation for completeness and obtain all necessary corrections and supporting documentation before submittal to the Relocation Manager for payment processing. The owner may request that the contractor be paid

directly for the work performed when submitting the claim for payment. If the owner does not explicitly request that the contractor be paid directly, the owner will be sent the payment for work performed and is responsible for paying the contractor. It is important that the negotiator and owner understand that the contract for performance of the relocation work is between the owner and the contractor who will perform the work. MaineDOT cannot contract directly for work to relocate personal property owned by a private individual to be relocated on private property no matter if the MaineDOT negotiator acts as an intermediary to obtains the bids and coordinates the schedule of work with the contractor.

8. **Appeals of Approved Move Expenses.** The negotiator will explain to the owner of personal property that the owner may appeal any MaineDOT decision regarding eligibility for relocation assistance and the amount of any relocation payment. The negotiator will explain the relocation appeal process to the owner and assist the owner with completing MaineDOT form ***RA-42 Request for Review of Relocation Payment***. If the MaineDOT is unable to negotiate any payment for actual, reasonable and necessary moving expenses for personal property at what MaineDOT deems a reasonable amount, either the MaineDOT or the displaced person, or both, may apply to the State Claims Commission in writing for a determination and assessment. The proceedings shall be the same as in a condemnation proceeding.
9. **Encroachments.** Personal property which is located within the existing right of way is an encroachment. Encroachments constitute a trespass within the MaineDOT's existing right of way and as such are not eligible for relocation reimbursement. Encroachments are not a relocation issue, but need to be addressed by the project negotiator. Encroachments can represent a safety hazard as a deadly fixed object or may impair safe sight distance. Encroachments in the right of way are automatically within the project work zone of the contractor or state forces and are therefore are at risk of damage and represent a potential for injury to construction personnel. If damage to the encroachment occurs the owner has no recourse of a claim against the contractor, since it is an illegal installation. The negotiator should provide the owner of the encroachment a letter by personal delivery or certified mail identifying the encroachment, its stationing and the new distance it needs to be setback so that it is located outside of the new right of way. The letter should state a specific date by which the encroachment needs to be removed from right of way. This letter should not be confused with MaineDOT form ***RA-32 Notice to Vacate Letter*** since there is no guarantee of a specific time duration before removal is required. It is suggested that 45 days be allowed when project scheduling permits to avoid confusion with relocation 90-day and 30-day notices.

**6-8 REPLACEMENT HOUSING PAYMENTS for RESIDENTIAL OWNER-OCCUPANTS****6-8.01 Owner-Occupants of 180 Days or more****6-8.01(a) Eligibility**

A residential displacee is eligible for a replacement housing payment for a 180-day homeowner-occupant if the person:

1. Has owned and occupied the displacement dwelling as that person's primary residence for at least 180 days immediately prior to the initiation of negotiations; and
2. Purchases and occupies a decent, safe and sanitary replacement dwelling within one year of the latter of the following dates (except the MaineDOT may extend such one year period for good cause at its discretion):
3. The date the homeowner-occupant receives final payment for the displacement dwelling; or
4. The date that at least one comparable replacement dwelling is made available to the homeowner-occupant.

**6-8.01(b) Amount of payment**

The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22, 500, (for exception see Housing of Last Resort section). This payment is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date payment is made to the homeowner-occupant for the displacement dwelling or the date a comparable replacement dwelling is made available, whichever is later. The payment will be the sum of:

1. A purchase price differential payment to **compensate for** the increased cost, if any, in the amount that the replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined **in accordance with section 6-8.02**. This is called a *purchase price supplement*.
2. The increased interest costs and other debt service costs which are incurred **in connection with the mortgage on the replacement dwelling, as determined with section 6-8.03**. This is called a **mortgage differential payment**;
3. **The sum of the reasonable incidental (closing) expenses associated with the purchase of the replacement dwelling, as determined in section 6-8.04**. This is called a *reimbursable incidental expense payment*.

**6-8.01(c) Purchase**

The homeowner-occupant “purchases” a replacement dwelling when:

1. An existing DS&S dwelling is acquired. The dwelling may be a conventional house, a condominium or co-op unit, a life estate in a dwelling, a mobile home or, a boat or motor home designed to provide living accommodations that is purchased and occupied as the primary place of residence and is located on a leased or purchased site and connected to all necessary utilities for functioning as a housing unit that meets a governmental requirements for a decent, safe and sanitary dwelling.
2. A life estate in a retirement home is purchased. The actual cost will be entrance fee plus any other monetary commitments to the home, except periodic service charges may not be considered. The RHP is limited to the reasonable cost of purchasing a comparable replacement dwelling less the acquisition cost of the acquired dwelling.
3. A dwelling previously owned or acquired is relocated and/or rehabilitated. The basis for determining the Purchase Supplement will be the current value of the dwelling at the time of relocation.
4. Construction is completed or contracts have been executed for the construction of a new dwelling on a site that is owned or acquired. The actual cost provision limits the reimbursable construction cost to only those costs necessary to construct a dwelling that is comparable to the one acquired. The costs of adding new features that clearly exceed comparable features in the displacement dwelling are not eligible for reimbursement. Eligible costs of the site will be limited to the current residential fair market value of the replacement site rather than what the displaced person actually paid for it.
5. Any displaced homeowner-occupant who has obtained legal ownership of a replacement dwelling or land, on which the replacement dwelling is located, constructed or relocated to, is eligible for a RHP if the replacement dwelling meets DS&S standards. The current fair market value of land and dwelling will constitute the “actual cost” in the replacement housing determination. The requirement to use the current fair market value of the replacement dwelling for residential use does not mean that the MaineDOT must have the property appraised. Any reasonable method of arriving at a supportable market value may be used by the MaineDOT.

**6-8.01(d) Occupancy of Replacement Dwelling**

The displaced homeowner-occupant will be considered to have occupancy of a replacement dwelling on the date the displaced homeowner-occupant takes title to the dwelling intending it to be a permanent place of residence.

**6-8.01(e) Decent, Safe and Sanitary (DS&S) Standards**

The displacee is not required to purchase and occupy comparable housing. To qualify for a RHP, the displaced homeowner-occupant must purchase and occupy a dwelling meeting DS&S standards as defined in Section 6-1.07.

MaineDOT will inspect the replacement dwelling before purchase by the displacee and verify that it meets DS&S criteria. The Relocation Agent will advise the displacee to promptly notify MaineDOT when a contract to purchase is signed. The Agent will also advise the displacee to write the following condition in any purchase contract:

*“This contract is conditioned on inspection of the property by MaineDOT representative by (date 10 days forward) and certification that it meets decent safe and sanitary standards.”*

A qualified MaineDOT employee, a local code inspector or a private contractor hired by MaineDOT, may perform the inspection and certification. If it is not practical to perform the inspection because the displacee has moved out of State, a request may be made to the DOT in that State to perform the inspection as a reciprocal service courtesy. If an inspection is not practical, a self-certification from the displacee that DS&S housing is occupied may be accepted.

The DS&S inspection is exclusively for the purpose of qualifying for payment of a relocation claim. It does not certify for any other purpose, and MaineDOT does not guarantee the condition or performance of the dwelling or its systems.

DS&S deficiencies must be corrected before a RHP claim is paid. However, a RHP may be made, provided that there is a holdback from the total purchase price supplement pending correction of the deficiencies and a MaineDOT final inspection. The cost to the displacee of correcting a deficiency may be added to the cost of the replacement dwelling for the purpose of determining the claim amount, but may not be reimbursed at a rate exceeding the maximum eligible purchase price supplement based on an existing DS&S listing.

When available comparable replacement properties are limited a RHP can be computed based upon an available property having minor DS&S deficiencies, provided the deficiencies can be corrected for a reasonable amount. Use of non-DS&S properties with minor deficiencies should be limited to situations where a windfall or excessive expenditure can be avoided and/or where housing of last resort is needed to relocate the displaced homeowner-occupant to comparable housing. The payment computation **must** reflect the cost to correct the deficiencies. If the housing is used to meet the “make available” requirement, the housing must be available and be DS&S at the time of the move.

**6-8.01(f) Persons not Lawfully Present in the United States (49 CFR 24.208)**

The **Uniform Act** provides that persons who are not legally present in the United States are not eligible for relocation payments and assistance. To implement this provision, MaineDOT may

require that each person or head of household applying for payment or assistance certify that the individual or, in case of a family, each family member, is either a citizen or a national of the United States, or an alien who is legally present in the United States. No payment will be made to a person or household that does not so certify. The certification may be included as part of the claim for relocation payments when filed with MaineDOT.

In the case of a family, the certification may be made by the head of household on behalf of other family members. In the case of an unincorporated business, farm or non-profit organization, that each owner is either a citizen or a national of the United States, or an alien who is legally present in the United States, the certification may be made by the principle owner, manager, or operating officer on behalf of other persons with an ownership interest. In the case of an incorporated business, farm or non-profit organization, certification that the corporation is authorized to conduct business in the United States may be made by the principle owner or operating officer on behalf of the corporation.

In computing relocation payments, if any member of a household or owner of an unincorporated business, farm or non-profit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payment or assistance may be made to that person. Any payment for which such a household, unincorporated business, farm or non-profit organization would otherwise be eligible will be recomputed for the household based on the number of eligible household members and for the unincorporated business, farm or non-profit organization, based on the ratio of ownership between eligible and ineligible owners.

The MaineDOT shall consider the certifications provided by each individual, family, unincorporated business, farm or non-profit organization and corporation to be valid, unless the MaineDOT determines that the certification is invalid based on a review of the alien's documentation or other information that the MaineDOT considers to be reliable and appropriate. If upon review of documentation or other credible evidence, the MaineDOT has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear genuine), and that as a result, such person may be an alien not lawfully present in the United States, the MaineDOT will obtain the following information before making a final determination:

1. If the MaineDOT has reason to believe that the certification is invalid of a person who has certified that he or she is an alien lawfully present in the United States, the MaineDOT will obtain verification of the alien's status for the local Bureau of Citizenship and Immigration Service (BCIS) Office. Any request for BCIS verification will include the alien's full name, date of birth and alien number, and a copy of the alien's documentation.
2. If the MaineDOT has reason to believe that the certification is invalid of a person who has certified that he or she is a citizen or national, the MaineDOT will request evidence of United States citizenship or nationality form that person and, if considered necessary, verify the accuracy of such evidence with the issuer.

The focus of the eligibility restriction is the administration of the relocation program, not enforcement of immigration law. MaineDOT representatives will not seek out illegal aliens. Personal information secured by MaineDOT representatives during the relocation process

should not be disclosed to any outside party unless ordered by a court and as authorized by MaineDOT management. MaineDOT representatives should check the current status of State law and executive orders as pertains to collecting alien status information before doing so on any project. Current guidance is offered by Executive Order dated April 9, 2004, titled AN ORDER CONCERNING ACCESS TO STATE SERVICES BY ALL ENTITLED MAINE RESIDENTS.

MaineDOT may exempt persons from denial of relocation assistance, if the Department determines that the denial would result in an exceptional or extremely unusual hardship to the person's spouse, child or parent who is a citizen of the United States or is an alien legally admitted for permanent residence in the United States. "Exceptional and extremely unusual hardship" means that the denial of relocation payments and advisory assistance to such person will directly result in:

1. A significant and demonstrable adverse impact on the health or safety of that person;
2. A significant and demonstrable adverse impact on the continued existence of the family unit of that person;
3. Any other impact that the MaineDOT determines will have a significant and demonstrable adverse impact on that person.

At the earliest time that a Relocation Agent becomes aware that a relocation case may involve persons who are not legally present in the United States, the Agent will present all relevant facts and circumstance to the attention of the Property Office. The Property Office will determine the course of action in each case.

#### **6-8.01(g) Payments – "Spend to Get" Requirement**

Replacement Housing Payments are reimbursement for actual costs incurred in the purchase of replacement housing. The displacee must "spend to get" the amount determined as the maximum eligible Purchase Supplement. The purchase price of the DS&S replacement dwelling must equal or exceed the amount MaineDOT determined as the estimated cost of comparable dwelling, or the claim will be reduced to the amount actually paid. In addition, the full amount of the payment must be applied to the cost of housing. This may be ensured by the RHP check being made available for disbursement at closing on the replacement dwelling, or payment of the amount into an escrow account. MaineDOT forms ***RA-55 Application for Replacement Housing Escrow Payment*** and ***RA-56 Escrow Agreement*** will be used for this purpose.

#### **6-8.02 Determination of Price Differential**

The upper limit of a purchase price supplement will be based on the cost of a comparable replacement dwelling. The purchase price supplement or price differential to be paid is the amount which must be added to the acquisition cost of the displacement dwelling and site to provide a total amount equal to the lesser of:

1. The reasonable cost that is necessary to purchase a comparable replacement dwelling as determined by MaineDOT, or
2. The purchase price actually paid to purchase and occupy a DS&S replacement dwelling by the displaced homeowner-occupant.

#### **6-8.02(a) Method**

If available at least 3 comparable replacement dwellings that are available on the open market will be examined and the purchase price supplement computed on the basis of the available dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. . The selection of the most representative comparable replacement dwelling will be made by careful consideration of all factors in the dwellings being considered and the needs of the displacee with reference to the elements in the definition of comparable replacement housing. To the extent feasible, comparable replacement dwellings will be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher. Less than 3 comparables may be used for this determination when fewer comparable dwellings are available. The Relocation Agent performing the determination must provide a full explanation supporting the determination, including a discussion of efforts to locate more than 1 comparable. . Use MaineDOT form ***RA-29 Comparable Dwelling Grid*** and ***RA-23 Comparable Replacement Housing Notice*** to determine the Purchase Price Supplement

To file a claim for a purchase price supplement payment for actual cost the Relocation Specialist should complete MaineDOT form ***RA-48 REPLACEMENT HOUSING PAYMENT NOTICE/APPLICATION*** for the homeowner-occupant's signature. The completed application for payment must be accompanied by all necessary documentation, such as either: a fully executed Purchase and Sales Agreement; a closing statement for the replacement property purchased; or a market valuation for the replacement property already owned by the displaced homeowner-occupant.

The asking price for the comparable replacement dwellings are not adjusted to reflect an indicated selling price, giving the displacee the benefit of the doubt. If a displaced person elects to purchase the comparable but cannot acquire the property for the asking price because of competitive bidding, the MaineDOT will determine the RHP based on other available comparables. When a dwelling is obviously overpriced in relation to other comparables, it may not be used in the replacement housing computation.

#### **6-8.02(b) Method – Major Exterior Attributes**

The site of the comparable replacement dwelling selected in computing the Purchase Price Supplement may be comparable except it lacks one or more major exterior attributes present at the displacement property (such as a significantly smaller site or lacks a, garage, outbuilding, or a swimming pool). The appraised value of these items will be deducted from the acquisition

cost of the acquired dwelling for purposes of computing the Purchase Price Supplement. It is not appropriate to add the value of the exterior attribute to the comparable.

The cost of actually building an exterior attribute at the replacement property occupied may be added to the acquisition cost provided that the attribute built has the same function as the one at the displacement property.

Figure 6-1 provides an example of determining a Purchase Supplement where there is a major exterior attribute.

The Appraiser assigned \$4,000 contributory value for the garage and a total property value of \$100,000 for the acquired property. A comparable house not having a garage is listed for sale at \$106,000. The Purchase Supplement amount is computed below:

Comparable dwelling		\$106,000
Displacement property value	\$100,000	
Less: Value of the garage	<u>\$ 4,000</u>	
LESS: Adjusted displacement property value		<u>\$ 96,000</u>
<b>Purchase Price Supplement amount</b>		<b>\$10,000</b>

**FIGURE 6-1 — Example of a Major Exterior Attribute (Garage)**

**6-8.02(c) Highest and Best Use Other Than Residential**

When the acquired dwelling is located on a site where the fair market value is established on a highest and best use generating a greater value than residential, the Purchase Supplement maximum amount will be determined by deducting the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land that represents a tract typical in size for the area from the probable selling price of the most comparable listing. See Figure 6-2.

The acquired house (whole take) is on a 6-acre site that is zoned commercial. The typical residential lot in the area is 1 acre. The land is appraised at \$120,000/acre and the dwelling is valued at \$20,000 (interim use value). A comparable house on a residentially zoned lot is available for \$150,000. The maximum Purchase Supplement amount is determined below:

Comparable property .....	\$ 150,000.
LESS: Value of the house acquired on 1 acre .....	<u>\$ (140,000)</u>
<b>Maximum Purchase Supplement amount.....</b>	<b>\$ 10,000.</b>

**FIGURE 6-2 — Example of Acquired Dwelling on a Commercial Zoned Site**

**6-8.02(d) Mixed-Use Property**

When the acquired dwelling is a unit in a structure that also includes space used for nonresidential purposes, the amount of the Purchase Supplement offer will be determined by using only that portion of the fair market value that is attributable to the residential use of the acquired property. See Figure 6-3.

A grocery store owner lives in a 1-bedroom, 1-bath apartment above the store. The residential unit has 1,000 ft<sup>2</sup> of habitable living space. The property is appraised at \$150,000. The Appraiser allocated 35% of total property value to the residence. There are several 1-bedroom, 1-bath units available for sale. They are: (a) a duplex with 2 identical units for \$125,000; (b) a single family house for \$75,000; and (c) a condo unit in a 6-plex for \$50,000.

Most comparable property: (a) duplex unit value .....	\$62,500 (\$125,000 ÷ 2)
LESS: Displacement dwelling value. ....	<u>\$52,500</u> (35% X \$150,000)
<b>Maximum Purchase Supplement amount.....</b>	<b>\$10,000</b>

**FIGURE 6-3 — Mixed Use (Example 1) Displacement Property in Residential and Commercial Use**

When the replacement property is a structure that includes space used for nonresidential purposes, only that part of the total cost that relates to the value of the owner's living unit will be used to determine the Purchase Supplement.

When the replacement property contains buildings other than the residence that are used for nonresidential purposes, the value of these buildings must be carved out of the entire purchase price of the replacement property in order to determine the residential use value. The residential use value will represent the amount paid for replacement housing when determining the Purchase Supplement payment amount. See Figure 6-4.

A family who is displaced from a single-family house with an acquisition value of \$90,000 and a Purchase Supplement of \$15,000 contracts to purchase an operating chicken farm for \$250,000. They will live in the farmhouse, which has an estimated value separate from the farm of \$100,000. The displaced family submits a claim for the full \$15,000 maximum Purchase Supplement amount.

The family is eligible to receive \$10,000, not \$15,000, as a Purchase Supplement payment. Before processing the claim for payment, the Relocation Agent must determine the value of the farmhouse on a normal lot for residential use in the area. This will determine the payment ceiling. The part of the purchase price attributable to the farm operation (\$150,000) will not be considered in the claim. This should be explained to the displaced family before they searched for replacement property.

**FIGURE 6-4 — Mixed Use Property (Example 2)**  
**Displacee Purchases Mixed Use Replacement Property**

When the acquired homeowner-occupant dwelling is part of a multi-family structure, the amount of the estimated maximum Purchase Supplement will be the difference between the value of a single unit of a multi-family comparable and the value of the portion of the acquired property devoted to homeowner-occupied, residential-use. When the replacement property is a multi-family structure, only the value of the displaced homeowner-occupant's living unit can be used to determine the Purchase Supplement payment, not the entire purchase price. The actual Purchase Supplement amount will be the price of a single unit of the selected multi-family comparable or the price of the homeowner-occupants replacement unit of the multi-family replacement, whichever is less, minus the homeowner-occupant's residential use portion of the acquired property. See Figure 6-5.

The acquired dwelling is a condominium unit in a building containing 3 stores and 6 residential units. The appraised value of the building is \$1.1 million. The value of the displacee's unit is \$130,000.

The Purchase Supplement is the cost of a comparable condo unit in a similarly configured building having residential and commercial units, less the \$130,000 attributed to the displacement unit. There may not be a condominium unit on the market in a mixed use, 6-residential unit building. Look for units in buildings having 5, 4, 3 or 2 units. Use the "most comparable" unit considering the ownership form and configuration of units, as well as other factors.

**FIGURE 6-5 — Mixed Use Property (Example 3)  
Owner Displaced From Condominium Unit**

#### **6-8.02(e) Partial Acquisition of a Typical Residential Site**

The following criteria will apply to partial acquisitions of typical residential sites:

1. Remaining Buildable Site. If the acquisition of a portion of a typical residential property causes the displacement of the homeowner-occupant from the dwelling and the remainder is a buildable residential site, the Department may offer to purchase the entire property. If the homeowner-occupant refuses to sell the buildable remainder site to the Department, the fair market value of the remainder will be added to the acquisition cost of the acquired property for the purposes of computing the maximum Purchase Supplement payment.

Example: The site is a 1.5 acre parcel with a homeowner-occupied single family dwelling. After the partial acquisition the remainder will be a desirable buildable lot of 0.90 acre. A comparable replacement dwelling has been found that is offered for sale for \$210,000.

Value Before the Acquisition -----	\$190,000
Value Remainder After Acquisition-----	<u>\$ 35,000</u>
Value of Acquisition-----	\$155,000

If the MaineDOT makes an offer to purchase the remaining buildable lot and the displaced homeowner-occupant refuses to sell, the value of the lot (\$35,000) may be added to the acquisition price for the purpose of the purchase price differential computation (\$155,000 + \$35,000). Consequently, instead of the computation being based on a \$155,000 acquisition price, the calculation can be based on a \$190,000 acquisition price, thus lowering the price differential by \$35,000.

.....Instead of this:		You would have this:
Cost of Comparable	\$210,000	\$210,000
Value of Acquisition	<u>\$155,000</u>	<u>\$190,000</u>
Price Differential	\$ 55,000	<b>\$ 20,000</b>

**FIGURE 6-6 – Example of a Partial Acquisition having a Buildable Remainder**

2. Remaining Uneconomic Remnant. If the acquisition of a portion of a typical residential property causes the displacement of the homeowner-occupant from the dwelling and the remainder site is an uneconomic remnant, the Department will offer to purchase the entire property. If the owner declines to sell the remainder that is an uneconomic remnant to MaineDOT, the value of the part acquired and damages to the remainder will be used in computing the RHP. The fair market value of the remainder site that is an uneconomic remnant is not used in computing the RHP.

Example: The site is a 1.5 acre parcel with a homeowner-occupied single family dwelling. After the partial acquisition the, the remainder is an uneconomic remnant. The value before the acquisition is \$190,000. The value of the remainder after the acquisition is \$5,000. Hence, the value of the part acquired and damages if any is \$185,000. A comparable dwelling has been found with a listing price of \$210,000.

<b><u>Owner Wishes to Sell</u></b>	
Cost of Comparable	\$210,000
Less: Payment for Acquired Property	\$185,000
Less: Value of Uneconomic Remnant	<u>\$ 5,000</u>
Equals: Price Differential	<b>\$ 20,000</b>
<b><u>Owner Does Not Wish to Sell</u></b>	
Cost of Comparable	\$210,000
Less: Payment for Acquired Property	<u>\$185,000</u>
Equals: Price Differential	<b>\$ 25,000</b>

**FIGURE 6-7 Example of a Partial Acquisition with an Uneconomic Remnant**

3. Larger Tract than Normal. If the acquisition of a portion of a residential property causes the displacement of the homeowner-occupant from the dwelling on a

significantly larger site than is typical for residential use in the area, the maximum estimated RHP is the asking price of a comparable replacement dwelling on a tract that is typical in size for residential use, less the acquisition price of the acquired dwelling and the portion of the acquisition site that represents a typical size residential lot in the area, but excluding the value of that portion of the acquisition that is in excess of the typical residential site in the area . See Figure 6-6 for an

The displacement dwelling is on a 4-acre site. One-acre lots are typical in the area. The house and 3 acres are being acquired. The appraised value is \$125,000 (no remainder damage). The Appraiser valued the land at \$6,000/acre. A comparable house on 1 acre is available and listed for sale for \$125,000.

Comparable property .....	\$ 125,000
Value of Acquisition .....	\$125,000
Less Value of 2 acres in excess of typical residential site (\$6,000/acre) .....	<u>\$ 12,000</u>
LESS: Displacement property .....	<u>\$ 113,000</u>
Maximum Purchase Supplement .....	\$ 12,000

\* \$12,000 value of 2 acres of acquisition area excess to typical lot has been deducted. The \$6,000 value of the remainder is not added to the displacement property value since it is part of the original lot in excess of the size of a typical residential lot in the area.

example.

**FIGURE 6-8 — Example of Partial Acquisition from Larger than Typical Residential Site**

#### **6-8.02(f) Payment to Occupant with a Partial Ownership**

When a displacement dwelling is owned by several persons and occupied by only 1 of the co-owners, the RHP will be the lesser of:

1. The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement, or
2. The difference between the total acquisition cost of the acquired dwelling and the amount determined by MaineDOT as necessary to purchase a comparable dwelling.

Generally, the circumstance of partial homeowner-occupants arises when the ownership comes from a family inheritance, where 1 or more but not all of the heirs occupy the property. See Figure 6-9.

Ms. Jones occupies the house. She shares ownership with her 2 sons who live elsewhere. MaineDOT acquires the property for \$120,000. A comparable house is available for \$130,000. Ms. Jones relocates to a condo unit costing \$60,000.

Mrs. Jones' share of the proceeds from the sale to MaineDOT is \$40,000. Applying the 2 part rule in Items #1. and 2. above, the applicable Purchase Supplement is \$10,000 (Rule #2.).

**FIGURE 6-9 — Example of a Homeowner-Owner Occupant having a Partial Interest**

The homeowner-occupants with a partial ownership interest must spend their share of the acquisition payment plus the computed supplemental payment in order to receive the maximum payment.

If unusual circumstances would create an unintended hardship on homeowner-occupants with a partial ownership, MaineDOT may apply an alternative method.

**6-8.02(g) Homeowner-Occupant Retains Displacement Dwelling**

The displaced homeowner may retain the dwelling and move and reoccupy it on a relocation site. The Purchase Supplement in an owner-retention situation will be determined as the lesser of the sum of the four items below, or the amount determined using the comparable method:

1. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;
2. The cost of curing any DS&S deficiencies (i.e., no payment may be made unless the replacement dwelling meets DS&S standards); and
3. The current fair market value for residential use of the replacement dwelling site, unless the displaced homeowner-occupant rented the displacement site and there is reasonable opportunity to rent a suitable replacement site; and
4. The retention value of the dwelling, if the retention value was reflected in the MaineDOT acquisition cost used when computing the replacement housing payment.

MaineDOT will develop the Replacement Housing Payment based on the comparable method and make the offer to the displaced homeowner-occupant. This serves as the estimated maximum replacement housing amount. If an owner salvages and relocates the displacement dwelling, MaineDOT will determine the actual RHP as above.

**6-8.02(h) Revisions to Purchase Supplement Amount**

Replacement housing must be available to the displacee at a price that is not higher than the selected comparable dwelling. If the original comparable dwelling is no longer available, the MaineDOT must assure itself that equally comparable dwellings are still available in the same price range. Where comparable housing is no longer available within the amount initially established, MaineDOT will review the housing market and establish a revised replacement housing amount. However, a Purchase Supplement amount previously offered will not be reduced as a result of this review, unless the displaced homeowner-occupant has made little or no effort to acquire a replacement dwelling, after a reasonable period of time, it would be permissible to reduce the offer if a less-expensive, comparable dwelling becomes available. If the MaineDOT elects to lower a payment offer, it will document the files with the rationale and make every effort to avoid acting in a coercive manner.

**6-8.03 Mortgage Interest Differential (MID)**

Increased interest payments are provided to compensate a displaced homeowner-occupant for higher increased interest costs required for financing a replacement dwelling. The increased interest payment will be allowed only when the dwelling acquired by MaineDOT was encumbered by a bona fide mortgage that has a valid lien on the dwelling for not less than 180 days before the established eligibility date, usually the initiation of negotiations date.

**6-8.03(a) General**

All valid mortgages on the dwelling that is acquired by MaineDOT will be used to compute the increased interest portion of the RHP. Home equity loans are valid mortgages on residential real property regardless of how the proceeds from the loans are used. Therefore, they must be included in the computation. In the case of a home equity loan, the unpaid balance will be that balance that existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less. When the property is secured with an adjustable rate mortgage, the mortgage interest rate that is current on the property as of the date of acquisition will be used in the computation.

The displaced person will be advised of the approximate amount of the MID as soon as the facts relevant to the current mortgages are known. The payment will be made at or near the time of closing on the replacement dwelling so that the new mortgage can be reduced.

**6-8.03(b) MID Payment Computation**

The payment for increased mortgage interest costs will be the amount that will reduce the mortgage balance on a new mortgage for the replacement dwelling to an amount that could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. The amount of the increased interest payment will be computed using MaineDOT Form ***RA-52 Increased Interest Payment Application***, which is based on:

1. The unpaid mortgage balances on the displacement dwelling. However, in the event the person obtains a smaller mortgage than the mortgage balance computed in the buy down determination, the payment will be prorated and reduced accordingly;
2. The remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter;
3. The nominal interest rates on the existing mortgages and the new mortgage. The nominal interest rate for the new mortgage cannot exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located; and
4. Purchaser's points and loan origination or assumption fees, but not seller's points that may be added as reimbursable to the displacee if they are typically charged, actually paid and are not reimbursed as incidental expenses. Reimbursement is limited to charges that would apply to the outstanding balance of the mortgage on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

Figure 6-10 provides an example of the determination of increased interest cost.

**GIVEN:**

1.	Outstanding balance –acquired dwelling mortgage .....	\$43,210
2.	Outstanding balance – replacement.....	\$47,000
3.	Remaining term, in months, acquired dwelling mortgage .....	212
4.	Term, in months, replacement dwelling mortgage.....	360
5.	Interest rate – acquired dwelling mortgage . .....	7.5%
6.	Interest rate – replacement mortgage .....	8.0%
7.	Points - .....	3

**DETERMINATION:**

A.	Monthly payment required to amortize a loan of \$43,210 in 212 months at a annual rate of 7.5% .....	\$ 368.38
B.	Amount of reduced loan having a monthly payment of \$368.38 for 212 months at interest rate of 8% .....	\$41,749.00
C.	Increased Mortgage Interest Costs: \$43,210 - \$41,749 .....	\$ 1,462.00
D.	3 Points on \$41,749 = .....	<u>\$1,252.47</u>
E.	Total Buydown: \$1,462.00 + \$1,252.47 .....	<b>\$2,714.47</b>

**FIGURE 6-10 — Example of Increased Mortgage Interest Payment****6-8.03(c) To Whom Payment is Made**

The increased interest amount will be paid to the mortgagee at the date of closing, if all required information is provided sufficiently in advance. However, if the homeowner-occupant provides evidence of payment or evidence of a replacement mortgage that would qualify for a MID payment, the Department may reimburse that person directly. Upon specific request, MaineDOT can make an advance payment into escrow prior to the homeowner-occupant moving.

**6-8.03(d) Partial Acquisition**

When the displacement or the replacement dwelling is located on a tract that is larger than normal for residential use in the area, the interest payment will be reduced to the percentage ratio that the respective acquisition price bears to the value of the part of the property that is normal for residential use property, except the reduction will not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

Where a dwelling is located on a tract that is larger than normal for residential use in the area, the total mortgage balance will be reduced to the percentage ratio that the value of the residential portion bears to the before value for computational purposes. This reduction will apply whether or not it is required that the entire mortgage balance be paid.

**6-8.03(e) Multi-Use Properties**

The interest payment on the multi-use properties will be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

**6-8.03(f) Highest and Best Use Other than Residential**

If the dwelling is located on a tract where the fair market value is established on a highest and best use other than residential, and if the mortgage is based on residential value, the interest payment will be computed as provided in the appropriate Section above. However, if the mortgage is obviously based on the higher use, the interest payment will be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.

**6-8.04 Incidental Expenses****6-8.04(a) Reimbursable Expenses**

Incidental expenses, also called closing costs, are those reasonable expenses that are actually incurred by the displaced homeowner-occupant related to the purchase of a replacement dwelling. MaineDOT form *RA-53 INCIDENTAL EXPENSES PAYMENT APPLICATION* will be used. Following are types of expenses that are reimbursable to the homeowner-occupant:

1. Legal, closing and related costs, including those for title search and mortgage insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;
2. Lender, FHA or VA appraisal fees;
3. Lender, FHA or VA application fees;
4. Professional home inspection, certification of structural soundness, and pest inspections;
5. Credit report;
6. Owner's and mortgagee's evidence of title (e.g., title insurance) not to exceed the cost for the comparable replacement dwelling;
7. Escrow agent's fee;
8. State and local revenue or documentary stamps, sales or transfer taxes charged to record the deed (not to exceed the costs for a comparable replacement dwelling);

9. Loan origination or assumption fees that do not represent prepaid interest;
10. Purchaser's points, but not seller's points, normal to similar real estate transactions; and
11. Other costs that MaineDOT determines to be incidental to the purchase.

#### **6-8.04(b) Un-reimbursable Expenses**

There are important limitations on payment for incidental costs. The following are not reimbursable:

1. No fee or expense is reimbursable as an incidental expense when it is determined to be part of the debt service or finance charge under the ***Truth in Lending Act***.
2. Expenses of ownership that are typically prepaid at closing are not reimbursable. This includes fire and liability insurance, real estate taxes placed in escrow and fuel oil that is on site at closing. Note that in Maine, many lenders require real estate taxes and insurance to be paid 6 months in advance. These are not eligible costs.
3. Expenses that are on the above list of eligible expenses but that are not typically paid by the purchaser in the county in which the transaction takes place are not reimbursable.
4. Title insurance is limited to the actual cost or cost based on the Number 1 comparable, whichever is less. Any payment in excess of this is not eligible for reimbursement.
5. Documentary stamps and transfer taxes are limited to actual costs, or the costs based on the Number 1 comparable, whichever is less. Any payment in excess of this amount is not an eligible cost.
6. Purchaser points and loan origination fees cannot exceed normal rates and are only paid if the displacee had an outstanding mortgage. The maximum payment is based on the lesser of the outstanding balance of the original loan or the amount of the new loan. These charges may not be reimbursed as an incidental cost if they were paid as part of the MID.

#### **6-8.05 Homeowner-Occupant of 180 Days or More Who Rents**

A homeowner-occupant who is eligible for an RHP under this Section who elects to rent a replacement dwelling is eligible for a Rental Assistance Payment RAP. The amount of a rental assistance payment is the difference in the monthly market rent of a comparable replacement dwelling available on the market minus the monthly market rent of the acquired dwelling; times 42 months, but not more than the amount the displaced family would have received had they purchased replacement housing. The method of determining the Rent Supplement is

addressed in Section 6-8. MaineDOT forms *RA-25 RENTAL ASSISTANCE PAYMENT ESTIMATE* and *RA-29 COMPARABLE DWELLING GRID* will be used.

A displaced homeowner-occupant retains eligibility for an RHP if a replacement unit is purchased within 1 year after the later of the date of final payment for the displacement dwelling or the date the owner was notified by MaineDOT of the availability of replacement housing. Further, eligibility to submit a claim for relocation benefits extends for 18 months from the later of the date of displacement or the date of final payment of the acquisition value of the acquired property. A homeowner who initially rents replacement housing may later purchase and qualify for an RHP. The total amount of the Rent and the Purchase Supplements, however, will not exceed the amount that would have been received if the homeowner had initially purchased and occupied replacement housing.

If the homeowner-occupant has previously received a rental assistance payment, the amount of this payment will be deducted from the amount to which the homeowner-occupant is entitled under this Section.

#### **6-8.06 Special Provisions**

##### **6-8.06(a) Payment After Death**

An RHP is personal to the displaced homeowner-occupants. Upon death of a displacee, the undisbursed portion of any payment will not be paid to the heirs or assignees, except:

1. The amount attributable to the displaced person's period of actual occupancy of the replacement housing will be paid.
2. The full payment will be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy the replacement dwelling.
3. Any portion of an RHP necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person will be disbursed to the estate.

##### **6-8.06(b) Advance RHPs in Condemnation Cases**

Displaced homeowner-occupants should receive the earliest possible payment of the RHP to which they are rightfully due. An advance RHP can be computed and paid to on an unsettled parcel if the determination of just compensation will be delayed pending the outcome of a State Claims Commission or Superior Court proceeding. If the amount of the RHP cannot be finally determined due to the pending proceedings, a provisional RHP may be based on acquisition price.

A provisional payment may be made upon the owner-occupant's agreement that the RHP will be recomputed using the acquisition price determined by the Commission or Court as compared to the actual price paid or the amount determined by MaineDOT as necessary to acquire a comparable DS&S dwelling. The relocation specialist will use MaineDOT form *RA-48A ADVANCE REPLACEMENT HOUSING PAYMENT APPLICATION* for advance replacement housing payments for unsettled acquisitions.

If the amount awarded as the fair market value of the property acquired plus the amount of the provisional RHP exceeds the lesser of the price paid for a replacement dwelling or the MaineDOT's determined cost of a comparable dwelling, the displacee will refund to the MaineDOT from the judgment or award, the amount of the excess. However, the homeowner-occupant will not be required to refund more than the amount of the RHP advanced.

The MaineDOT Office of Legal Services will inform the State Claims Commission of the provisional replacement housing payment amount, and that MaineDOT will pay the difference, if any, between the determined cost of replacement housing and the State Claims Commission award. The final RHP will be deferred until the case is finally adjudicated (either by the State Claims Commission or the Superior Court). The final RHP amount will be computed using the just compensation award as the acquisition price.

**6-9 REPLACEMENT HOUSING PAYMENTS – FOR 90-DAY RESIDENTIAL OCCUPANTS****6-9.01 General**

A residential tenant or homeowner-occupant, who is in occupancy at the displacement dwelling for 90 days or more before the initiation of negotiations for the property, is eligible for a Rental Assistance Payment (RAP) to enable relocation to comparable replacement rental housing. A homeowner-occupant who is displaced and is in occupancy for at least 90 days before the initiation of negotiations is eligible for the same benefits as the displaced residential tenant of at least 90 days.

Alternatively, a tenant or an owner as described above may elect to receive a Down Payment Supplement (DPS) amount that can be applied toward a down payment and incidental expenses for the purchase of a Decent, Safe and Sanitary (DS&S) replacement dwelling. In addition, a homeowner-occupant of at least 90 days may apply the converted RAP towards the additional allowable costs to relocate an owner retained dwelling and make it DS&S.

The payment amount for either a RAP or a DPS is limited to a maximum of \$5,250. This limitation does not apply, however, if the relocation comes under the criteria for last resort housing as discussed in Section 6-10.

**6-9.02 Rental Assistance Payment - Computation****6-9.02(a) General**

The rental assistance payment is 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities (that is heat, electricity, water and sewer) for a comparable replacement dwelling, or
2. The monthly rent and estimated average monthly cost of utilities for the DS&S replacement dwelling actually occupied by the displaced person.

**6-9.02(b) Base Monthly Rental – Defined**

The base monthly rental of the displacement dwelling is the lesser of:

1. The average monthly cost for rent and utilities (e.g., heat, electricity, water, sewer) at the displacement dwelling for a reasonable period prior to displacement as determined by MaineDOT (for a homeowner-occupant, use the fair market rent for the displacement dwelling. For a tenant who pays little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or

2. Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. Current low income limits for Maine can be found at: <http://www.fhwa.dot.gov/realestate/ua/ualic.htm> The base monthly rent will be established solely on the criteria in paragraph 6-8.02 (b) (1) of this section for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or,
3. The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

Housing must be available within a displacee's financial means.

#### **6-9.02(c) Determination of Base Monthly Rent for the Displacement Dwelling.**

The following rules will apply to determination of the base monthly displacement rent for residential occupants in the circumstances indicated:

1. Utilities included in base monthly rent are heat, electricity, water and sewer only. Preferred documentation is copies of utility bills over a 1-year period. Other acceptable documentation is billing history for the property provided by utility company or billing statements covering less than 1 year. Any other form, including a statement from the residential occupant, will require secondary support. This could be the informed judgment of the Relocation Manager and Chief Property Officer of typical charges for a unit of a given size and type.
2. The Relocation Agent will secure income, rental and utility information from the residential occupant. If the occupant refuses to provide income information or reasonable verification, the base monthly rental will be based on Item #1 in Section 6-8.02(b).
3. For a residential occupant who pays little or no rent for the displacement dwelling, the fair market rent will be substituted in the RAP calculation, unless this would cause a hardship. Questions as to what constitutes "little or no rent" in specific cases will be referred to the Relocation Manager for a decision.
4. For a displaced homeowner-occupant who elects to rent replacement housing, see Section 7-6.06, the economic rent of the displacement dwelling plus utilities will be used.

5. For a displaced tenant receiving welfare assistance from a program that designates amounts for shelter and utilities, the base monthly rent will be the total of the amounts designated for shelter and utilities.

#### **6-9.02(d) Rent Supplement – Method**

The Relocation Agent will determine the rental rates of comparable housing by use of the three comparable method. MaineDOT's forms *RA-25 RENTAL ASSISTANCE PAYMENT ESTIMATE*, and *RA-29 COMPARABLE DWELLING GRID* will be used to determine the RAP. There will not be adjustment of the asking rent for available comparable rental dwellings.

If available, the Relocation Agent will use at least three comparable replacement rental dwellings to determine the RAP. The RAP will be computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. If fewer than three comparables are available, the Relocation Agent may determine the payment from one or two comparables, and will document the file as to efforts made to locate 3 comparables. All rental properties must meet DS&S standards and must be comparable to the displacement dwelling in essential characteristics.

Utility costs of heat, electricity, water and sewer must be included in both the displacement and the selected comparable rent. Reasonable efforts should be made to secure accurate information. The residential occupant's utility bills or a statement from the utility company is best. If actual costs are not available, a reasonable estimate should be made based on size and type of unit and other factors. The basis for the utility estimate should be documented in the Project File.

The comparables will be recorded and evaluated on Form *RA-29 COMPARABLE DWELLING GRID*. The focus of the evaluation will be the elements of comparable replacement housing. The most comparable rental will be selected as the basis of the determination. The Relocation Agent will record an explanation of the selection.

The residential occupant must be advised of the availability and location of the comparable property on which the RAP amount is based and provided with a copy of MaineDOT form *RA-25 RENTAL ASSISTANCE PAYMENT ESTIMATE*. The Relocation Agent should confirm the continued availability before providing the RAP information to the residential occupant. The residential occupant should be provided current listings of other comparable rental dwellings by supplying a copy of form *RA-29 COMPARABLE DWELLING GRID*.

If the comparable dwelling on which the Rent Supplement is based ceases to be available after an offer is made to a residential occupant, a re-determination is not required as long as there are comparable dwellings available on the market that are within the financial means of the displacee, including the amount of the computed RAP. If market conditions change to remove availability within the range of the computed RAP, a re-determination based on current available market data is required.

**Example 1 Non-Low Income Rent Exceeds 30 % of income.**

Joe High lives in Penobscot County and has a gross income of \$4,000/month. Penobscot County low income limit for a 1 person household is \$27,250/year. Sam's monthly rent and utilities are \$1,500 per month. An available comp is \$1,700/month.

Sam's rent supplement is \$1,700 minus \$1,500 = \$200 X 42 = **\$8,400.**

(Under the old Rule, the calculation would have been 30% of gross income is \$1,200; \$1,700 minus \$1,200 = \$500 X 42 = \$21,000.)

**Example 2 Low Income Rent Exceeds 30 % of Income**

Jim Lowe lives in Penobscot County and has an income of \$2,000/month. Penobscot County's low income limit for a 1 person household is \$27,250/year. Her monthly rent and utilities are \$650/month.

A comparable rental is available at \$700/month.

30% of her monthly income is \$600/ month (\$2,000 X 0.30). Since this is less than her actual rent, it becomes the basis for the rent subsidy calculation.

Thus, \$700 minus \$600 = \$100 X 42 = **\$4200.**

**Example 3 Low Income, Rent is Less Than 30% of Income**

Bob Beelow also lives in Penobscot County with a low income limit of \$27,250. Bob's gross monthly income is \$2,000 and his monthly rent and utilities total \$500.00.

An available comp has been found for \$700/month.

30 % of Bob's monthly income is \$600/month (\$2,000 X 0.30), and since this is more than the \$500/month he is currently paying, the actual rent and utility payments are used in the RAP calculation. Thus \$700 - \$500 = \$200 X 42 = **\$8,400.**

**6-9.02(e) Publicly Owned Housing**

For a tenant who is not receiving assistance under a government housing program before displacement, comparable housing is currently available private housing. A publicly owned

housing unit may be comparable housing only for a person who is displaced from a public housing unit. A privately owned but publicly rent subsidized unit will qualify as a comparable dwelling only for a person who is displaced from a similarly subsidized dwelling. However, a displaced tenant may voluntarily choose to occupy publicly owned or rent subsidized housing.

#### **6-9.02(f) Section 8 Housing Assistance Program**

Section 8 is a rent subsidy program funded by the U.S. Department of Housing and Urban Development (HUD) to enable low-income families to rent privately owned DS&S housing. Section 8 is administered by local housing agencies. Landlords receive a subsidy representing the difference between 30% of an eligible tenant's adjusted gross household income and reasonable housing rent as determined under program rules. Section 8 benefits are normally portable, meaning the benefit moves with the recipient.

Section 8 assistance has a feature that is superior to the relocation rental assistance payment in that it is not limited to 42 months but continues as long as the recipient household is income eligible. The Relocation Agent should make every effort to relocate existing Section 8 recipients to units in which their Section 8 benefits will continue. If a normal relocation RAP is paid, the local housing agency may consider this income and disqualify the displaced household from eligibility for Section 8. It may be difficult to reenter the program, as there is usually a long waiting list.

In order to transfer Section 8 benefits, the recipient must relocate to a DS&S unit in which the owner agrees to participate in this program. Local housing agencies generally maintain current lists of participating owners and properties.

A tenant cannot be required to accept a Section 8 rent subsidy in lieu of a Rent Supplement payment under the relocation program.

#### **6-9.02(g) Eligibility and Disbursement of Rent Supplement**

The displaced residential occupant must relocate to a DS&S replacement dwelling to qualify for RAP payment. To qualify for full RAP, the replacement dwelling rent and utilities must at least equal the determined comparable rent.

The amount of the rental assistance payment will be paid in a lump sum unless MaineDOT determines that it is in the public interest to make periodic payments over the 42-month term of the benefit. However, the full amount of the rental assistance payment vests immediately whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing, except as limited by special provisions after death which are the same as those found in section 6-8.06(a) "Payment After Death."

On request of the residential occupant, the RAP amount may be assigned to direct payment to a landlord over the term of the benefit.

**6-9.02(h) \$5,250 Benefit Limit**

A RAP payment offer is limited to \$5,250 under normal program authority. MaineDOT has an overriding responsibility to enable residential occupants to rent replacement housing within their financial means. If the payment computation exceeds \$5,250, the special authority under last resort housing provisions is applicable. See Section 6-10 for information on last resort housing.

**6-9.02(i) Change of Occupancy**

If a residential occupant, after moving to a DS&S dwelling, relocates within the 1-year period of continued eligibility to a higher cost rental unit, another claim may be presented for the amount in excess of that amount that was originally claimed, but not to exceed the total RAP originally computed.

**6-9.03 Down Payment Benefit – 90-Day Residential Occupants**

A displaced residential occupant eligible for a RAP, who elects to purchase a replacement dwelling in lieu of accepting a rental assistance payment, may elect to apply the entire computed payment to the purchase of a replacement dwelling and allowable incidental expenses.

As a matter of MaineDOT policy, a down payment assistance payment that is less than \$5,250 will be increased to \$5,250 provided the entire amount is applied to incidental expenses and the purchase price of a DS&S replacement dwelling. The MaineDOT will follow this policy in a uniform and consistent manner so that eligible displaced persons in like circumstances are treated equally. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under section 6-8.01(a) if the owner meets the 180-day occupancy requirement.

MaineDOT has a responsibility to enable a residential occupant to relocate to housing of the same tenancy or ownership status as was occupied before displacement. Efforts will be made through advisory assistance and the down payment benefit to assist a tenant to move to ownership, but the achievement of ownership by tenants is not a program requirement.

**6-9.04 Homeowner-occupants of 90 to 179 Days**

Homeowners who have been in occupancy of a displacement dwelling for at least 90 days but fewer than 180 days before the initiation of negotiations for the property are eligible to receive a rental assistance payment to a maximum amount of \$5,250. The determination of benefit is based on the economic rent of the displacement dwelling. The Relocation Agent may secure advice from the Chief Property Officer or the Senior Property Officer in determining the economic rent. Use Forms *RA-25 RENTAL ASSISTANCE PAYMENT ESTIMATE* and *RA-29 COMPARABLE DWELLING GRID* for the determination of the maximum rental assistance payment.

A homeowner-occupant may apply the RAP amount toward either the down payment and incidental cost of a DS&S replacement dwelling in the same manner and terms that are applicable to a 90-day tenant as discussed above, or for additional costs to relocate their retained dwelling and make it DS&S,. However, the payment may not exceed the amount the homeowner would receive as a Replacement Housing Payment if that person met the 180-day occupancy requirement.

#### **6-9.05 Occupants Who Do Not Meet Length of Occupancy Criteria**

Displaced residential occupants who began occupancy at the displacement property fewer than 90 days before MaineDOT initiated negotiations for the property but before MaineDOT acquired the property are eligible for the following relocation benefits:

1. Advisory services as described in Section 6-3 to assist in locating adequate replacement housing;
2. Moving expenses as described in Section 6-5; and
3. Last resort housing provisions, but only if comparable rental housing is not available at rental rates within thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. Current low income limits for Maine can be found at: <http://www.fhwa.dot.gov/realestate/ua/ualic.htm> (financial means test).

The provisions of this paragraph are applicable only to persons who occupy a dwelling at the date the Department acquires the property.



## **6-10 RELOCATION ASSISTANCE AND PAYMENTS – MOBILE HOMES**

### **6-10.01 General**

Mobile home occupants are entitled to the same relocation benefits as those that apply to residential occupants from conventional housing. Eligible moving expenses for owners and displaced occupants of mobile homes are described in section 6-5.03 *Eligible Moving Costs* and section 6-5.06 *Moves from a Mobile Home*. However, mobile homes have unique legal and physical characteristics that require separate consideration in methods of determining replacement housing benefits. These special characteristics relate to the potential for the mobile home unit to be either realty or personalty, and the potential for the occupant to have owned the dwelling unit and rented the site or vice versa. This Section provides guidance in determining replacement housing and moving cost benefits that are applicable to mobile home occupancy.

### **6-10.02 Personalty vs. Realty**

The MaineDOT must determine if mobile home occupants are displaced from their mobile home for a project, applying the following considerations. This determination should be made uniformly to ensure an orderly and equitable relocation of all displaced residents. A mobile home may have legal status as either real estate or personalty depending on the following factors:

1. The permanency of its fixture to the ground,
2. Its condition,
3. The intention of the owner in placing the mobile home on its present location, and
4. Custom and practice in the community where it is located.

In determining the status of a mobile home, MaineDOT references the definition in 36 MRSA Section 551, which states that mobile homes, except stock in trade, shall be considered real estate for the purposes of taxation. It is MaineDOT's policy, to treat the acquisition of mobile homes as real estate. Exception approvals to this policy will be the responsibility of the Chief Property Officer and will be well documented.

If the mobile home is assessed as real estate by the municipality in which it is located and is not currently licensed as a recreational vehicle, it will normally be considered real estate. In the community in which a mobile home is located, if mobile homes are typically bought and sold by deed with the conveyance of the land on which the mobile home is located, it will normally be considered real estate. If the mobile home is permanently fixed to the site (e.g., on a concrete foundation with basement), it will normally be considered real estate. In some cases, the distinction is not clear and a legal determination is necessary. The personalty/realty decision will be completed before the property appraisal is ordered. The Relocation Agent may provide

input in this process for questions that involve the feasibility of relocating the mobile home unit, the availability of replacement sites, or the consistency with decisions made on similar situations encountered in the past or anticipated on the same project or in the local area.

If the displacement mobile home unit is personalty and not acquired, it will be moved to a replacement site and all costs will be reimbursed as moving expense. The occupants will be eligible for replacement housing benefits pertaining to the purchase or rental of a replacement site only and temporary housing costs during the move and until the mobile home is put in like condition and is made DS&S at the new site.

Whether or not displaced from the mobile home itself, the owner occupant or the tenant-occupant of the acquired mobile home site is eligible for a replacement housing payment for the purchase or lease of a comparable replacement home site.

#### **6-10.03 Replacement Housing Payments (RHP) – Owner/Tenancy Status of Mobile Home and Site**

A characteristic that is unique to mobile home occupancy is that there may be divided ownership of the dwelling unit and its site. A mobile home occupant may own the dwelling but rent the site. Conversely, an occupant may own the site and rent the dwelling unit.

The status of the displacee with regard to the mobile home unit and the site must be separately considered when determining replacement housing benefits, both in the displacement and in the replacement dwellings. There may be a replacement housing benefit for the mobile home unit and for the site, as presented in the following rules:

Maximum Payment Eligibility (\$22,500 or \$5,250). The ownership or rental status of the displacee with regard to the mobile home dwelling unit, not the site, determines the maximum payment amount that is applicable. If the displacee owned the mobile home unit at the displacement site for 180 days prior to the initiation of negotiations, the maximum eligibility is \$22,500 for the unit and site. If the displacee rented the displacement dwelling unit for at least 90 days before the initiation of negotiations, the maximum eligibility is \$5,250 for the unit and site.

Displacee Owns Mobile Home Unit – Rents Site. If the displacee owns the displacement mobile home unit but rents the site, there is eligibility for a Purchase Supplement to acquire ownership of a replacement mobile home unit. There is also eligibility for a Rent Supplement (maximum \$5,250) to enable the displacee to rent a replacement site. The maximum total for the two components is \$22,500.

Displacee Rents Mobile Home – Owns Site. If the displacee rents the displacement mobile home but owns the site, there is eligibility for a Rent Supplement to enable renting a mobile home unit and a Purchase Supplement to enable purchase of a replacement site. The maximum total for the two components is \$5,250 (see Item #1 above).

Displacee Owns Both Mobile Home and Site. If the displacee owns both the displacement mobile home unit and the site, there is eligibility for a Purchase Supplement (maximum \$22,500) to enable purchase of a unit and site. This situation is the same as a Purchase Supplement on acquisition of a conventional dwelling.

Displacee Rents Both Mobile Home and Site. If the displacee rents both the displacement unit and the site, the eligibility is for a Rent Supplement (maximum \$5,250) to enable rental of a replacement unit and site. This situation is the same as for a tenant-occupant of a conventional dwelling.

All Program Eligibility Rules Apply. In each of the ownership/rental status situations above, the normal term of occupancy (90 days or 180 days) applies, with the clarification that the term of occupancy pertains to occupancy of the mobile home on the site that is acquired by MDOT. The other eligibility criteria, including replacement housing DS&S standards and legal residence in the United States, apply to mobile home displacees.

#### **6-10.04 Comparable Housing Availability**

If a comparable replacement mobile home is unavailable, the Purchase Supplement or Rent Supplement amount may be based on the reasonable cost of a conventional comparable replacement dwelling.

#### **6-10.05 Owner Declines to Sell Mobile Home to MaineDOT**

If MaineDOT determines that the mobile home is personal property and that it would be practical to relocate the mobile home to a comparable replacement site, but the owner-occupant declines to do so, the MaineDOT will appraise and acquire the mobile home as real estate and provide the owner the relocation assistance benefits for which they are eligible as home owners.

#### **6-10.06 Moving and Related Expenses**

Displaced persons who move the mobile home units are entitled to payment of the actual, necessary costs of moving the mobile home unit and its contents to a replacement site. This may include the following items:

1. Dismantling and disconnecting utilities, removing tie downs and skirting, reconnections at the replacement site, and reassembling any appurtenances (e.g., porches, decks, skirting, awnings);
2. Reasonable, customary and nonrefundable mobile home park entrance fees;
3. Moving of personal property contents of the separately from the mobile home on an actual cost or a schedule reimbursement basis. The contents may also be moved in

the mobile home unit and the occupants reimbursed on the basis of the move cost schedule; and/or

4. Transportation and temporary lodging for the occupants, if MaineDOT determines that this is necessary for the mobile home unit to be relocated and set up for occupancy.

Transportation costs may be reimbursed up to 50 miles unless this limitation is extended by MaineDOT in advance for good reason.

#### **6-10.07 Additional Rules Applicable to Mobile Home Displacements**

##### **6-10.07(a) Repairs to Mobile Home Unit**

Repairs necessary to move the mobile home, cure DS&S deficiencies or qualify the mobile home for mobile home park acceptance criteria may be reimbursed as move cost expenses as MaineDOT determines is reasonable.

##### **6-10.07(b) Person Moves Mobile Home**

A displacee who is reimbursed for moving the mobile home unit is not eligible to receive a Purchase Supplement or Rent Supplement for the purchase or rental of a replacement unit, but may be eligible for a payment to assist in the purchase or rental of a comparable mobile home site.

##### **6-10.07(c) Partial Acquisition of a Mobile Home Park**

The acquisition of a portion of a mobile home park may leave a remaining part of the property that is not adequate to continue the operation of the park. MaineDOT may determine that a mobile home located on the remaining part of the property must be moved as a direct result of the project. The occupants of the mobile home will be considered displaced persons eligible for full relocation benefits.

##### **6-10.07(d) Last Resort Housing (LRH)**

Displaced persons from mobile homes are eligible for consideration under provisions of last resort housing. See Section 6-11, on the same basis as displacees from conventional housing.

## **6-11 REPLACEMENT HOUSING OF LAST RESORT**

### **6-11.01 General**

A displaced person will not be required to move until a comparable replacement dwelling is made available that is within the financial means of the household. Comparable replacement housing may not be available because of any of the following circumstances:

1. Available housing is not Decent, Safe and Sanitary.
2. A competing demand for housing causes temporary unavailability, which would delay timely advancement of the highway construction schedule.
3. Displacees have special needs relating to the definition of comparable replacement housing that is not met by the available housing stock.
4. Housing is available but its cost exceeds the financial means of displacees after application of maximum replacement housing benefit amounts (\$22,500 and \$5,250).
5. A displacee has not met the length of occupancy requirements for normal relocation benefits (e.g., occupant for 90 days prior to initiation of negotiations). Benefits for low income tenants will still be calculated using the 30% of income rule. For others, the calculation will be rent to rent. See Section 6-8 for guidance.

If any of the above circumstances apply, the Department is authorized to a broad range of measures to make housing available. These measures, which are outside normal relocation benefit limits, are called collectively last resort housing.

### **6-11.02 Replacement Housing Standard**

MaineDOT is committed to enabling persons, who are displaced as a result of acquisition for transportation projects, to relocate to comparable replacement housing that is within their financial means. When this cannot be accomplished within the limits of normal relocation program benefits, last resort housing program provisions are used.

Comparable replacement housing is by definition, (see Section 6-1), functionally equivalent to the displacement dwelling. It performs the same function, provides the same utility and is capable of contributing to the same style of living as the displacement dwelling. Consistent with this definition, housing may be provided that does not possess every feature of the displacement dwelling and differs in certain space and physical characteristics. For example, housing may be provided that is smaller but is upgraded in qualitative respects to adequately accommodate persons who have been displaced from substandard or functionally obsolescent housing.

MaineDOT will offer to provide housing that is the same ownership or tenancy status as that which the person had before displacement. There is no requirement to enable a displacee to change status by use of last resort housing. However, MaineDOT may cooperate in a

displacee's desire to change status when it is less costly for the Department to do so. For example, MaineDOT may provide down payment assistance that is less than a determined Rent Supplement under last resort housing.

#### **6-11.03 Last Resort Housing Methods**

Last resort housing authority allows a broad range of methods to be considered for providing housing of the type and on terms needed by project displacees. Select a method that provides comparable housing at the most reasonable cost within the time constraints of highway project scheduling and the urgency of the displacee's need.

Methods include, but are not limited to, the following:

1. A Replacement Housing Payment (RHP) greater than \$22,500 for a displaced owner or \$5,250 for a displaced tenant;
2. Rehabilitation, modification or addition to an existing replacement dwelling to accommodate the displacee's needs;
3. Construction of a new replacement dwelling;
4. Relocation and, if necessary, rehabilitation of an existing non-DS&S dwelling;
5. Purchase of land and/or a replacement dwelling and subsequent sale, lease to or exchange with a displaced person;
6. Acting as a mortgagee in financing a displacee's purchase of housing; and/or
7. Provision of features including entrance ramps, wide doors, etc., that will make a dwelling accessible to a person who is disabled.

#### **6-11.04 Justification for Use**

Any decision to provide last resort housing must be adequately justified either: (1) on a case-by-case basis for good cause, or (2) by a determination that there is little if any comparable replacement housing available to displaced persons within the project area and therefore last resort housing is needed for the area as a whole.

In making the above determinations, give consideration to:

1. The availability of comparable housing in the project area,
2. The resources available to provide comparable housing, and
3. The individual circumstances of the displaced person.

Or by a determination that:

1. There is little, if any, comparable replacement housing available within the entire project area.
2. The project cannot be advanced to completion in a timely manner without last resort housing assistance.
3. The method selected is cost effective, considering all elements that contribute to the total program or project cost. For example, will a project delay justify waiting for less expensive comparable replacement housing to come on the private market?

Place the detailed justification for use of last resort housing in the Project and Parcel Files.

#### **6-11.05 Cooperative Agreements**

The Department may enter into agreements with any Federal, State or local agency or contract with any individual, firm, corporation or nonprofit association for services in connection with these activities. MaineDOT may, if practicable, use the services of Federal, State or local housing agencies or other agencies having experience in the administration or conduct of similar housing assistance activities.

#### **6-11.06 Consequential Displacement**

Any person, who is displaced because of the acquisition of real property for a last resort housing project under MaineDOT's power of eminent domain, including amicable agreements under the threat of such power, is entitled to all eligible benefits under the relocation assistance provision. This provision is not applicable to an owner-occupant who voluntarily acts to sell the property to the State of Maine for last resort housing and the owner certifies the same in a statement that will be retained in Department files.

#### **6-11.07 Last Resort Housing Disbursements**

Rental assistance payments made to displacees who rent replacement housing under this section will, at MaineDOT's discretion, be paid either in a lump sum or in annual installments directly to the displacee or to the provider of housing. Other payment options will be arranged if MaineDOT determines that a direct payment or annual payments to a displacee would not be prudent and in the public interest. Whenever special payment options are invoked, provide documentation in the file with the reasons.

A displacee may not be required to accept last resort housing in place of a Rent Supplement or a Purchase Supplement for which they may be eligible under normal program provisions. A displacee may choose to accept a conventional Purchase or Rent Supplement in lieu of a last

resort housing solution. This is on the condition that all eligibility criteria are met, including rental or purchase and occupancy of a DS&S dwelling.

A displacee who receives a housing or financial payment under last resort housing will be required to certify that the displacee accepts the housing or benefit in lieu of the Rent Supplement or Purchase Supplement for which they would otherwise be eligible.

#### **6-11.08 Compliance With Other Statutes**

The development and implementation of last resort housing projects will comply with the applicable provisions of the following, including the amendments and regulations issued pursuant thereto:

1. Section 1 of the ***Civil Rights Act of 1966*** (42 **UCS** 1982 et. seq.);
2. Title VI of the ***Civil Rights Act of 1964*** (42 **UCS** 2000d et. seq.);
3. Title VIII of the ***Civil Rights Act of 1968*** (42 **UCS** 3601 et. seq.);
4. The ***National Environmental Policy Act of 1968 (NEPA)*** (42 **UCS** 4321-4347);
5. Executive Order 11063 (Equal Opportunity in Housing) 3 **CFR** Comp. 1959-1963, page 652;
6. Executive Order 11246 (Equal Employment Opportunity) 3 **CFR** Comp. 1964-1965, Page 339 or Federal Laws, Regulations and Materials Relating to the Federal Highway Administration, Page IV-41; and
7. Executive Order 11625 (Minority Business Enterprise) 3 **CFR** Comp. 1971, Page 213.



# CHAPTER SEVEN

## PROPERTY MANAGEMENT

MAINE RIGHT OF WAY MANUAL

*December 2010*

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# CHAPTER SEVEN

## PROPERTY MANAGEMENT

### 7-1 PURPOSE, OBJECTIVES AND ADMINISTRATION

The property management function is the responsibility of the Property Office and it is staffed by a Property Manager and other support staff as may be assigned. Support staff may include qualified professional consultants who can provide a 24-7 response to emergencies occurring at occupied MaineDOT owned properties, acquired as part of MaineDOT transportation projects. These emergencies typically involve heating, plumbing or electrical issues, but can include a broader range of problems. Project level property management activities are performed by MaineDOT personnel assigned to project teams or MaineDOT Region Offices.

Property management supports project development by actively managing the occupancy of property during the preconstruction period and by removing improvements in an orderly, cost-effective manner to conform to the project schedule. The function also rents or sells property that is surplus to transportation needs, thus, returning property to an economic use and generating income. Property management also maintains property outside the operating right of way to minimize hazards and risks to the public.

#### 7-1.01 Objectives

The property management function is responsible for the following program objectives:

1. Exercise prudent stewardship over acquired property.
2. Secure acquired property, including buildings and other improvements, to minimize risk and injury.
3. Remove structures in an orderly, timely and cost-effective manner.
4. Receive revenue from sale or rental of property that is not otherwise needed for transportation purposes.
5. Maintain a current and inclusive inventory of properties that are excess to transportation needs.
6. Maintain effective coordination with other right of way functions and with MaineDOT Region offices.

**7-1.02 Scope of Property Management Activities**

Personnel assigned to property management will advance the above objectives by performing the following activities. Each item is discussed in detail later in this Chapter:

1. Perform inspections of acquired property to determine if all items acquired are in possession of the Department and to insure that property is safe and secure.
2. Insure that property is adequately secured from unauthorized entry.
3. Arrange removal or correction of hazardous conditions (e.g., trash accumulations, contamination and infestations).
4. Manage rental of property, when appropriate, for the short term before needed for highway construction.
5. Dispose of structures and improvements on acquired right of way to clear the site for construction.
6. Rent or sell property that is surplus to transportation needs.
7. Cooperate with MaineDOT Region offices in proposals to use right of way air space, modify access control and implement MaineDOT's access management program.

**7-1.03 Organization and Responsibilities**

The Property Manager, a member of the Property Office staff, is responsible for general implementation of the property management program. The Property Manager will, under the direction of the Chief Property Officer, perform the following responsibilities:

1. Advise field project personnel on property management policy and practices, laws and regulations.
2. Interpret property management policy as it applies to unique or complex cases.
3. Review and recommend action on proposals for property rental or disposal of property or use of air rights.
4. Maintain the Statewide inventory of property that is not in use as highway right of way.
5. Exercise quality assurance measures that insure that property management activities are performed in a timely, efficient and cost-effective manner.
6. Coordinate effectively with Project Managers, MaineDOT Legal Services Office, MaineDOT Region Managers and project right of way personnel on property management matters involving these units.



**7-1.04    Laws and Regulations**

The following legal authorities control the property management function within MaineDOT:

1. Title 23 ***Maine Revised Statutes Annotated (MSRA)***:
  - a. Section 61            Vacation, Sale or Lease of Acquired Land,
  - b. Section 154-D       Notice to Vacate, and
  - c. Section 160          Property Management;
  
2. Title 23 ***US Code of Federal Regulations***:
  - a. Section 710.401       General,
  - b. Section 710.403       Management,
  - c. Section 710.405       Air Rights on the Interstate,
  - d. Section 710.407       Leasing, and
  - e. Section 710.409       Disposals.
  - f. Section 620 Subpart B Relinquishment of Highway Facilities

**7-1.05    Quality Assurance**

The goal of QA/QC in property management is to consistently achieve the objectives presented in Section 7-1.01. The Property Manager's responsibilities for quality assurance (QA) include maintenance of policies that comply with laws and regulations, policies that are effective and current, and policies that use best practices in the field of property management. In addition, QA includes advice and guidance to project and field staff that will enhance their knowledge and skill in performing the elements of property management for which they are responsible.

Quality is a shared responsibility of all who are involved in the property management function, including field staff involved on an intermittent basis. The Property Manager will emphasize commitment to quality by providing specific advice and instruction to field personnel on standards of performance in areas such as building inspection and security, building disposals and property rental.

Responsibilities of the Property Manager for Quality Control include the formal and informal review of the performance of property management activities at the MaineDOT Region Office and project level, including work by staff and by private contractors. The purpose of the reviews is to insure compliance with laws, regulations, policies and professional standards, and to identify opportunities to improve performance. The form and frequency of reviews will be determined in consultation with the Director of the Property Office as set forth in Chapter 10.





## **7-2 ACQUIRED PROPERTY — SECURITY**

MaineDOT staff will act to insure the protection of acquired property from damage or theft during the period before it is needed for construction. Assigned staff will also take reasonable measures to protect the public safety and welfare from risks associated with the condition of, or access to, acquired property. Also, staff will insure that the Department takes possession of all fixtures and improvements acquired by the Department as part of the real estate acquisition.

### **7-2.01 Inspection of Property**

The Senior Property Officer will notify the Property Manager via email of improved property to be acquired at an early stage in the project. This email will include a PDF of the property in question and the email is to be cc:ed to the Chief Property Officer. The Property Manager creates a file for each parcel which identifies buildings, structures or other improvements to be acquired. The file is made available to the assigned right of way staff member on the project team for use in the inspection after acquisition and subsequent property management activities.

An assigned project staff member will perform a physical inspection of each improved property as soon as feasible after title vests with the State and after the building is vacant. The inspection will be performed with the approved appraisal in hand as a reference to what should be present on the site and its condition. The inspection will include the following determinations:

1. Presence and condition of all improvements included in the acquisition;
2. Public safety risk factors (e.g., swimming pools, open basements, trash accumulation);
3. Presence of hazardous contamination (see section 7-2.02);
4. Suitability of the improvements for sale or rental;
5. Personal property on site belonging to others;
6. Occupancy status of property; and
7. Need for rodent control measures.

The inspector will coordinate with other MaineDOT staff as necessary to resolve conditions noted in the inspection that require action. This may include safety and security issues, relocation status of occupants, rental agreements and recovery or accounting for property items improperly removed from the site. The Property Manager will advise the project and MaineDOT Region Office staff in handling unusual or sensitive issues that arise from the inspection. The inspector will record the inspection, significant findings and actions taken in a report or memorandum to the file.

The inspector will make arrangements for the transfer of keys and the final utility readings and turnoffs when the property is vacated.

#### **7-2.02    Safety and Security**

MaineDOT is responsible for reasonable measures to protect the public safety and secure acquired property to minimize potential damage or theft. The Department will take action as indicated in the following sections for conditions noted in the post-acquisition inspection.

##### **7-2.02(a)   Protection of Buildings**

Window openings on the basement, first and second levels, of vacant buildings will be boarded unless a determination is made that this measure is not necessary. Reasons for not boarding openings include imminent demolition or sale for removal, rental or adequate property fencing. Building security performance may be by MaineDOT maintenance staff or by private contract.

##### **7-2.02(b)   Protection of Site**

Accumulations of trash will be removed from acquired sites. Mowing or vegetation removal will be performed as necessary to prevent visual blight and conform to community standards. Priority will be assigned to the removal of potential hazards to children. This includes the removal of swimming pools or abandoned equipment, filling excavations, etc. MaineDOT staff will consider the imminence of highway construction in selecting the actions to protect sites. Properties will be posted against trespass if this is effective, although it may be counter effective in some areas, or if requested by adjacent owners or local officials.

##### **7-2.02(c)   Coordination with Community**

MaineDOT staff will consult as necessary with adjacent property owners, community organizations and public safety officials to coordinate its security actions, hear concerns and request assistance. Police and fire departments may be requested to provide more frequent patrols to vacant parcels. The MaineDOT Region Office will provide the name and phone number of a MaineDOT staff member or property management consultant for contact in case of emergency.

##### **7-2.02(d)   Hazardous Materials and Substances (Wastes)**

Upon the initial inspection of the premises and after it has been vacated by the former owner/tenant, there may be hazardous materials/substances found on the premises or property in the form of paints, cleaners, fertilizers, etc. Oil drums, cans, etc. may also be on the premises. In the event of these substances are found, contact the MaineDOT Environmental Office to arrange for removal.

**7-2.02(e) Rodent Control**

It is important to identify rodent infestations or conditions which support infestations (e.g., garbage, trash, debris) at physical inspection or earlier. Rodents will migrate to adjacent property if their food source or habitat is disturbed. It is important to remove infestations as soon as they are identified; do not defer until buildings are demolished. The Property Manager should be advised of the discovery of need for rodent control measures.

Rodent control will normally be performed by contract with local licensed professional exterminators. If contractors are not available or cannot perform the service promptly, MaineDOT Maintenance staff will perform the rodent control.

MaineDOT staff assigned to rodent control will consult with local health, housing inspection or public safety authorities concerning methods, products and precautions that must be used in rodent control. Also, the lead person will consult with the Property Manager before beginning rodent control activities.

If MaineDOT staff performs rodent control, the sites will be re-inspected periodically to remove carcasses, reset control measures and evaluate effectiveness. If the work is performed under contract, MaineDOT staff will perform inspections to insure the effectiveness of the contractor's actions.



### **7-3 PRECONSTRUCTION OCCUPANCY OF ACQUIRED PROPERTY**

#### **7-3.01 Occupancy by Previous Owner or Tenant**

Residential owner occupants and tenants in occupancy at date of MaineDOT acquisition are entitled to 90 days advance written notice of the date that they will be required to move. It is very important that the staff responsible for managing property on a project consult with the Relocation Manager concerning control dates for issuance of notices to vacate for residential occupants.

Persons in occupancy of property at acquisition will be permitted to continue in possession for a minimum of 90 days under terms defined in the Memorandum of Agreement (Form PM-1). This provides for the occupants acceptance of all risks and expenses arising from occupancy as compensation to MaineDOT during the 90-day possession period. The occupant may apply for an extension beyond the 90-day period. MaineDOT, at its discretion, may charge an additional amount as short-term rent during the extension period. The Property Manager may waive rent for residential occupants on recommendation of the Relocation Manager. The normal reason for waiver will be a finding of financial hardship that will prevent an occupant displacee from occupying comparable replacement housing. The rent waiver determination will be documented in the project file.

If rent is charged to the original occupants during the 90-day period immediately following acquisition, the amount is subject to appeal to the State Claims Commission. Rent charged after the initial 90-day period is not subject to State Claims Commission appeal.

Rent owed to MaineDOT by the original occupants of property when they vacate the property may be deducted from claims for relocation benefit payments. However, MaineDOT will not make such deductions if it would interfere with the ability of a residential displacee to purchase or rent replacement housing within their financial means. The Property Manager will consult with the Relocation Manager before authorizing a deduction from relocation claims.

#### **7-3.02 Rental of Acquired Property**

On information that the original occupant has vacated an improved property, the Property Manager, Senior property Officer and Project Manager will decide the disposition of the improvements. The usual decision will be to clear the improvement from the right of way by sale for removal or by demolition. Rental of property will be considered only if there is an extended time before the property is needed for construction, and the physical inspection (see Section 7-2.01) confirms that the property is suitable for continued use and occupancy.

When the decision is to rent property subsequent to acquisition, the Property Manager or qualified project staff assigned by the Property Manager will perform the following activities:

1. Secure prospective occupants by the most cost-effective means, including classified advertisement, bulletin board posting, and contacts with real estate agents, etc.

2. Determine fair rental in consultation with the Project Appraiser or Review Appraiser. The rent rate must be no more than would normally be charged for short-term occupancy in the area in which the property is located. The basis for the determined rent will be documented in the parcel file.
3. Determine any special conditions and limitations that will be placed in the rental agreement. This will include responsibility for maintenance and for structural repairs, allowed modifications to property and limitations on permitted uses.
4. Determine the reasonable rent security deposit.
5. Determine the liability insurance required of the occupant to hold the State safe from liability from property and casualty risks.
6. Prepare lease (P/M-7) and present to the prospective occupant for execution.

The lease will specify that the occupant will be required to vacate the property on 30 days notice and will not receive relocation payments or services of any kind.

The lease will normally provide that the occupant is responsible for utilities, maintenance and repairs. If the occupant performs repairs that are significantly beyond routine maintenance, are unforeseen and are necessary to continued occupancy, the rent may be reduced. The Property Manager will decide on rent reduction requests based on the equities of the situation and the overall interest of the State.

The lease will be effective when the Property Office Director or designee signs it.

The Property Manager will monitor project advertising schedules and issue a 30-day notice to vacate to occupants at least 60 days before the construction project is advertised. The security deposit held by MaineDOT will be returned after a final physical inspection of the site, final reading of utilities and surrender of keys. The security deposit returned will be reduced by any amount owed to the State or owed to third parties who file a lien against the property.

Rent delinquency of 60 days will be referred to the MaineDOT Legal Services Office for collection. If the Office of Legal Services concurs, delinquent rental accounts may be placed with a private collection agency.

## **7-4 DISPOSAL OF STRUCTURES**

The Property Manager will perform planning and oversight required for the clearance of structures and improvements from the right of way in preparation for construction. Qualified Region Office or project personnel may be assigned to perform specific tasks in this process.

MaineDOT normally clears right of way by contract with private demolition firms. Clearance can also be performed by State forces or by the transfer of structure disposal to the highway construction contract.

### **7-4.01 Pre-Disposal Inspection**

Pre-Disposal inspection is a continuation of the process outlined in Section 7-2.02(d) and is an ongoing process between the MaineDOT personnel and the asbestos inspector. The inspector will prepare a memorandum that documents the inspection and presents conclusions. The memorandum will address the following points as applicable:

1. Presence, extent and type of asbestos;
2. Recommended remediation before disposal; and
3. Protective or remediative measures for the site.

The inspection report (memorandum) will be circulated to offices or persons who have an interest or who share responsibility for the project or the property. This includes the MaineDOT Environmental Office, Bureau of Maintenance and Operations, the Project Manager and the Project Resident. The report will be available to prospective bidders for structures and to demolition contractors.

### **7-4.02 Contract for Demolition or Removal**

Contract for sale and removal or demolition is the normal means of disposal of structures. Demolition by MaineDOT forces or inclusion in the highway construction project may also be utilized if determined to be cost effective. MaineDOT may also dispose of the structures by other means described in 7-5.04.

The following steps will be followed in contracting for removal or demolition:

1. Prepare detailed descriptions and specifications for removal. The pre-disposal report may be referenced in the specifications and provided as a bid document.
2. Determine the amount of bid deposit by certified funds that will be required.
3. Develop performance period and provision for liquidated damages.
4. Prepare bill of sale for structures and improvements to be removed.

5. Advertise for a minimum 2-week period on the State of Maine Website. Other cost-effective advertisement methods may be used in addition, particularly if they provide exposure to minority or women-owned businesses or individuals.

The advertisement will be published in accordance with applicable MaineDOT rules pertaining to sale by bid. In addition, the following provisions will be included in the advertisement:

1. MaineDOT reserves the right to reject bids for any reason.
2. Bid deposit will be by certified funds (no personal checks).
3. Acceptance of successful bid is by approval of the Commissioner of Transportation.
4. Time is of the essence in meeting performance dates.
5. Successful bidder is responsible for compliance with all environmental regulations. The pre-disposal inspection report is a full MaineDOT disclosure only.

All certified checks for performance deposits or sale of structures will be payable to the Treasurer-State of Maine. Proceeds of sale will be routed to the MaineDOT Bureau of Finance and Administration. The revenue from sale of structures will be applied to reduce the net cost of the project. No Federal Highway Administration approvals or credits to Federal funds are required.

The Project Resident or the Property Manager will inspect the sites to verify the completion of demolition or removal and will release the performance guarantee if the work has been completed in conformance with the contract.

#### **7-4.03    Demolition in Highway Contract**

Demolition performed by the highway construction contractor will be approved if deemed cost effective. Also, buildings may be removed under highway contract if no responsible and reasonable bids were received in response to the advertisement for removal or demolition.

The Property Manager will advise the Project Manager at the earliest possible time if the need for demolition by highway contractor is anticipated. Early notification is necessary to include demolition in the bid documents, rather than as a potentially higher cost change order after the contract is advertised.

Jurisdiction over structures will be transferred to the contractor by contract or work order, and the keys will be provided through the Program Resident Engineer.

The Property Manager will complete the documentation by completing Forms PM – 3 and 5.

The responsible MaineDOT Project Engineer will perform the inspection for completion of demolition.

**7-4.04    Sale of Buildings for Removal**

The Property Manager will approve the sale of individual buildings for removal from the right of way if the buildings are determined to have a value for continued use. This can arise from the following circumstances:

1. The structures have a positive value after cost of their removal from the right of way.
2. Buildings are determined to have historic significance by the Maine Historic Preservation Commission and can be removed for preservation or for salvage of architectural parts.
3. The buildings can be relocated or salvaged to meet a demonstrated community need.

If buildings have a positive net value after removal, they will be advertised in the manner described in Section 7-3.02. A provision will be placed in the advertisement that only positive amount bids will be accepted.

MaineDOT may transfer ownership of buildings having historic significance or community value to responsible governmental or non-profit organizations at no cost. Approval of the Commissioner of Transportation is required. The Property Manager will secure advice and recommendations of the MaineDOT Environmental Office concerning proposals for these transfers. The Department will condition transfers on the same criteria that are applicable to demolition contracts as to completion dates, environmental compliance and site restoration.

**7-4.05    Building Removal by MaineDOT Forces**

State Forces can remove buildings or improvements under certain circumstances including the following:

1. Fast response is necessary to protect public safety. If a building is threatening collapse, or if there are open pits, standing water, rubble from fire or storm, or other dangerous conditions, particularly if they attract children.
2. Work cannot be performed economically under contract and State personnel are otherwise available.

If the demolition by State forces is anticipated, the Property Manager will confer with representatives of the Bureau of Maintenance and Operations to review work specifications, work schedule and environmental hazards. If the need for demolition arises from emergency circumstances, the responsible manager will respond in the manner required to protect public safety.



## **7-5 SURPLUS PROPERTY**

### **7-5.01 Surplus Property — General**

Surplus property is real estate under the jurisdiction of MaineDOT, which is determined as not needed for transportation use. Surplus property may originate from the following actions:

1. Purchase of total takes where a part is required for right of way, leaving uneconomic remainders;
2. Changes in highway design plans after right of way acquisition;
3. Reconstruction of roads where portions of the existing right of way are not needed;
4. Removal of MaineDOT facilities such as maintenance yards, storage yards, rest areas and materials sites; and
5. Purchase of right of way that ultimately is not needed because of location or design changes or abandonment of project (see Section 7-5.02).

Sale or rental of surplus property usually originates from an inquiry by an interested party. All inquiries are recorded on Form PM-4, which also contains a checklist for review by the Department.

MaineDOT reserves the right to require payment of an administrative fee from a party that requests to purchase or lease surplus property. This will compensate the Department for the expense and resources in processing the request, including research, appraisal, survey, etc. The administrative fee may be applied to the purchase or rental. The administrative fee may be returned if the request is refused by MaineDOT after review or if the surplus property is disposed or leased to another party.

A Real Property Inventory is maintained (see Section 7-7.03) of all property in use or available for non-highway purposes. Properties listed in Categories 5, 7 and 8 are determined as surplus and subject to disposal or reuse. Occasionally, the properties are reclassified to reflect changes in the Department's transportation program.

Property subject to the Abandonment of Purpose provision discussed in Section 7-5.02 is considered for disposal as surplus property only after the described process is completed and the offer of first refusal to repurchase is rejected.

### **7-5.02 Abandonment of Purpose (1 *MRSA* 815)**

In some cases, property that MaineDOT has acquired through eminent domain must be offered for sale to the condemnee or heirs on a first-refusal basis if it has not been used for the purpose acquired within eight years from the date of condemnation. This provision of 1 *MRSA* 815 was

enacted May 31, 2001 and contains broad exemptions. This provision does not apply in cases where:

1. The property was taken in whole or in part using Federal funds or the eminent domain authority to take the property was derived from Federal law.
2. The property acquired does not meet state or municipal lot size or frontage requirements.
3. The property was taken to expand existing corridors used for transportation or utility purposes including highways, bridges, railroad lines or utility lines.
4. The property was acquired before October 1, 2001.
5. The property was acquired by voluntary transfer.

In cases where this legislation does apply, the following rules will apply in implementing Section 815:

1. Property is used for the purpose acquired if construction has begun within 8 years of the date of vesting.
2. The Statute provides for a reaffirmation of public purpose that will extend the 8-year period for an additional 3 years. Subsequent reaffirmations are permitted under the Statute.
3. The provisions of Section 815 apply without regard to relocation payments and services that the owners received during the period of State ownership.
4. The 8-year period need not expire for the Department to make a finding of abandonment of public purpose. The objective of the Statute is best served if the determination is made earlier than the 8 years allowed in the Statute.

The following process will be followed in an offer of first refusal pursuant to abandonment of purpose:

1. The Property Office will establish a Section 815 control date for each new right of way project.
2. The Property Manager will review Section 815 control dates yearly.
3. The Property Manager will maintain a log of project control dates. The control date will be 8 years after the vesting of the first property acquired for the project. The Property Manager will request a determination from the Program Managers upon expiration of each control date for projects that have not proceeded to construction. Determination alternatives include:
  - a. Project has been abandoned.

- b. Project is deferred but is not abandoned.

The Program Managers will be asked to provide supplemental information necessary for the following steps in this process.

- 4. If the project has not been abandoned, the Property Manager will initiate a Reaffirmation of Public Purpose. This will conform to the requirements of Paragraph 1 in the Statute.
- 5. If the project has been abandoned, the Property Manger will notify, in writing, all property owners or their heirs of their right of first refusal to repurchase in the manner specified in Paragraph 2 of the Statute.
- 6. The repurchase will be offered at a price equal to compensation paid by MaineDOT plus an additional amount representing the monetary inflation based on the Consumer Price Index as defined in 36 **MRSA**, Section 5402(1) over the period the property has been in State ownership.
- 7. Property purchased under Abandonment of Purpose will be conveyed by Deed of Vacation.

If the notified owner or heirs refuse the right to repurchase, the property may be considered for disposal as surplus property in accordance with Sections 7-5.03 and 7-5.04. Failure to respond within 90 days of delivery of notification will be considered refusal.

### **7-5.03 Surplus Property Determination**

The following applies:

- 1. The Property Manager in conjunction with the Region Managers and Senior Property Officers will determine that the property proposed for disposal is not needed for present or foreseen transportation use. This determination will have been completed for property subject to the Abandonment-of-Purpose provision described in Section 7-5.02 above. In addition, the Property Manager will decide priorities for transfer if there is an indicated alternative public use or if there is an interest from an adjacent property owner.
- 2. The Property Manager in conjunction with the Program Managers decides alternatives and priorities for transfer after circulating a memorandum to interested MaineDOT departments and agencies inviting comments. The memorandum will describe the property and its proposed disposition and state a reasonable period in which responses will be considered (14 days is suggested). The circulation will include the following MaineDOT Offices and Agencies asked to comment, but it may be extended to include other potentially interested parties:

Internal Clearances:

- a. MaineDOT Environmental Office;
- b. MaineDOT Property Office;
- c. MaineDOT Bureau of Transportation Systems Planning
- d. MaineDOT Bureau of Maintenance and Operations, including Traffic Engineering;
- e. MaineDOT Safety Office; and/or
- f. Project Development Program Managers.

External Clearances:

- a. Maine State Housing Authority, if property is suitable for residential use;
  - b. Federal Highway Administration, if acquired with federal title 23 funds;
  - c. Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes
3. The Property Manager, after considering all information, will record the surplus property decision in a memorandum and will also specify conditions, rights to be reserved and manner of disposal.
  4. No property will be disposed of if it will break a control of access segment.

#### **7-5.04 Process for Disposal of Surplus Property**

The steps presented below define the process of disposing of surplus property. The checklist on Form PM-4 will be used to record the date actions in the process are completed:

1. Surplus property may be offered to a municipality or a State agency for a public use at less than market value or at no cost. The Governor's Deed (see Section 7-5.05) will contain a reversionary clause that will prevent the subsequent private sale of the property if it had been conveyed to the agency at less than market value.
2. A surplus property may be disposed to a former owner at its current value, except that owners having refused offers to purchase under Section 7-5.02 will have the same status to purchase as the general public.
3. MaineDOT, at its discretion, may offer surplus property to adjacent owners at a minimum of current fair market value.

4. FHWA approval is required for disposal of real property acquired for the Interstate highway system. The form, content and time of concurrence requests will be determined in consultation with the FHWA Division Office.
5. FHWA approval is required for exceptions to charging less than fair market value for disposed property if the property was acquired with Federal funds. The MaineDOT approval request will demonstrate that the exception is in the overall public interest based on the specifically referenced social, environmental or economic purposes, nonproprietary public use (see Item #1. above) or public transportation.
6. In determining the need for FHWA approval, fair market value will be either the approved appraisal or price estimate, the highest acceptable bid or the price negotiated under Item No. 10 below.
7. The value of surplus property to be disposed by public bid will be determined by valuation methods determined by the Chief Property Officer. The provisions of Chapters 3 and 4 of this *Manual* can be applied to surplus property valuations. Waivers of appraisal provisions apply where the value is considered to be less than the appraisal waiver threshold. The Chief Property Officer may determine an opinion of value or a broker's market analysis is appropriate for certain disposals. Properties of nominal value may be offered for an administrative fee.
8. The surplus property not disposed in accord with Items #1. or #2. above may be offered for sale at public bid, offered for sale with a licensed real estate broker, or advertised for sale by MaineDOT. Bid deposits may be required at the discretion of MaineDOT. All parties who had previously expressed an interest in purchasing the property will be provided a print or electronic copy of the advertisement. Normally the advertisement will specify a minimum amount as an acceptable bid.
9. The Property Manager will recommend acceptance or rejection of the high bid or rejection of all bids. The reasons for rejection of bids will be recorded in the file. If the high bid is accepted, the successful bidder is notified and forwarded a purchase and sales agreement, if appropriate. Unsuccessful bidders will be notified and their deposits returned.
10. If no bids are received, or if the successful bidder fails to return the executed purchase and sales agreement within a stipulated time, the Department may negotiate for sale with any interested party. If bids are rejected, the Department will wait 7 days before negotiating with interested parties to allow the opportunity for appeal-rejected bids.
11. If the property is listed for sale with a real estate broker or advertised for sale by MaineDOT, the listing will state "as is" condition. The term of listing and the commission rate will be negotiated on the basis of what is reasonable and typical in the local area.

**7-5.05    Conveyance of Surplus Property**

Conveyance of surplus real property will be either by Deed of Vacation or by Governor's Deed. The Deed of Vacation is used to release property to the previous owner or the owner's heirs or assigns. The Governor's Deed is used to convey fee simple interest to any party other than from whom the property was obtained.

The Commissioner of Transportation signs the Deed of Vacation. The Governor signs the Governor's Deed. The Property Manager initiates the preparation of deeds and, after proofreading, the documents are transmitted to MaineDOT Legal Services Office. After Legal Services Office approval, the Property Manager routes the documents through appropriate organizational levels to the Commissioner or the Governor for signature, as follows:

1. Bureau of Project Development Director;
2. Director of Engineering and Operations;
3. Commissioner, for execution;

And if a Governor's Deed:

1. State Budget Office,
2. Governor's Office,
3. Secretary of State Office.

Personal property will be conveyed by Bill of Sale. This applies to the sale of fixtures or improvements (e.g., as portable storage sheds) that are sold for removal from the site.

**7-5.06    Revenues**

MaineDOT may require payment for property purchase in certified form. The proceeds from the sale of real estate will be routed to the Bureau of Finance and Administration.

There will be no credit to Federal funds for disposed surplus property from any system if the proceeds representing the Federal share are dedicated to use for projects eligible for Federal funding under Title 23 of the **US Code**.

## **7-6 RENTAL OF PROPERTY OR HIGHWAY AIR SPACE**

The Department may rent real property not needed for highway right of way. The Department may also rent air rights to highway right of way for uses that do not interfere with the safe operation and maintenance of the highway. The rental is subject to the process and restrictions set forth in the following paragraphs.

### **7-6.01 Rental of Property - Not Highway Right of Way**

Property not included in highway right of way may be rented for a specific term if the Property Manager determines that the property will not be needed for transportation purposes for an extended period, normally one year. This determination will be made only after consulting with the appropriate Department personnel.

MaineDOT may grant a municipality or a public agency a permit to use property for a non-proprietary public purpose at no rent or less than market rent.

The permitted uses and any special limitations will be specified in the rental agreements. The Property Manager will consult with affected or interested parties to determine relevant lease provisions and use limitations.

The Property Manager may authorize rental of property not included in right of way. A private real estate property management firm may be utilized to administer the rental.

FHWA approval is required for exceptions to charging fair market rent for property if the property was acquired with Federal funds. The MaineDOT approval request will demonstrate that the exception is in the overall public interest based on specifically referenced social, environmental or economic benefits, non-proprietary public use or public transportation.

Except as above, the process for rental will be the same as presented in Section 7-3.02 for preconstruction rental of property acquired for right of way.

### **7-6.02 Lease of Highway Air Space**

Highway air space is that space above, below or at the established highway grade line, lying within established right of way limits. The Department will consider proposals for the temporary or permanent use of highway air space that do not interfere with the safe operation and maintenance of the highway facility nor expose users to other hazards, and otherwise are determined to be in the public interest.

The proposed use of highway air space should be reviewed in close coordination and cooperation with the Traffic Engineering Division, Bureau of Project Development, Bureau of Maintenance and Operations and the MaineDOT Environmental Office. In addition, municipalities and local development and planning agencies should be informed and consulted.

Proposals for the use of Interstate right of way air space require prior FHWA approval and will be processed in accordance with 23 **CFR** 710.405 Air Rights on the Interstate. Interstate air space proposals will also conform to FHWA guidelines at: [www.fhwa.dot.gov/realestate/index.htm](http://www.fhwa.dot.gov/realestate/index.htm) .

## **7-7 PROPERTY MANAGEMENT FOR PROGRAMMATIC GOALS**

### **7-7.01 Access Management**

The MaineDOT Traffic Engineering Division has issued driveway and entrance permit rules to regulate vehicular access to State highways under 23 **MRSA** 704. The purpose of the rules is to protect public safety, preserve the traffic-carrying capacity of highways, and avoid the long-term cost of constructing new highway capacity. The rules control the number, spacing and placement of new entrances and driveways.

The Department's Access Management Program regulates access by adjacent property owners while protecting the right of reasonable access to the public highway system. The regulation of driveways and entrances is generally a police power activity, and there is no taking of private property rights under eminent domain authority.

MaineDOT right of way personnel at all levels will support the access management program and contribute to the efficient administration of the Department's rules by being sufficiently familiar with them to explain their purpose and intent to affected property owners. Technical questions should be referred to the Traffic Engineering Division.

MaineDOT Traffic Engineering personnel in the Region Offices may be called to participate at on-site meetings or to contact property owners concerning compliance or violations or to encourage shared entrances. This work will be performed under the guidance of the Traffic Engineering Division.

### **7-7.02 Access Control Modifications**

The Maine Legislature enacted 23 MRSA Section 704 to regulate entrances to highways and thereby ensure cost effective and safe highways in the state. This law became effective on September 21, 2001. Section 1-6 provides that the Department of Transportation and the municipalities shall deny ingress to and egress from property abutting the highway when the Department has acquired access rights, except that the Commissioner of Transportation may allow access for the development of State and State-aid highways.

### **7-7.03 Maintenance of Real Property Inventory**

The Property Manager maintains a current and continuing inventory of property that is not presently in highway right of way use. The inventory, located in the Property Office, contains property that is used for transportation services (park-and-ride lots) and for environmental protection and enhancement (wetlands) in addition to property that is under lease and available for lease or sale. The following designated categories are inventoried:

Category 1.....Licenses

Category 2.....Leases

Category 3.....	Park-and-Ride
Category 4.....	Wetlands
Category 5.....	Uneconomic Remnant/Sell to Abutter
Category 6.....	Hold for Future Highway Purposes
Category 7.....	Available for Sale
Category 8.....	Landlocked/Uneconomic Remnants
Category 9.....	Permits
Category 10.....	Mitigation (including scenic easements)

The inventory is maintained by the Property Manager and is updated monthly.

#### **7-7.04 Public and Recreational Access at Water Crossings**

MaineDOT is a party to the interagency Memorandum of Agreement Providing for Public and Recreational Access at Water Crossings and Properties Adjacent to Water. This April 1999 Agreement dedicates the efforts of the Departments of Transportation, Inland Fisheries and Wildlife, Conservation, and Marine Resources to act in committee (Public Recreational Access Committee) to facilitate public access to waterways and property adjacent to waterways.

MaineDOT staff responsible for property management will cooperate fully in advancing the objectives of the Memorandum of Agreement. In particular the authority of the Department to convey rights or interests to other State agencies will be transferred via a financial order which gives maintenance and supervisory authority of the property to the receiving agency.

#### **7-7.05 Special Use Entrances**

Special use entrances are limited use entrances on control of access segments of highways. The responsibility for review of the special use entrances on an annual basis to ensure that their use restrictions are not violated is a Bureau of Maintenance and Operations function. The Property Office will coordinate with the respective MaineDOT Region Office to remove the source of any violations that are found and will notify the MaineDOT Legal Services Office, if necessary.

#### **7-7.06 Relinquishments**

A relinquishment is the conveyance of a portion of highway right of way or facility by MaineDOT to a local government for continued highway use. MaineDOT generally relinquishes property when the facility no longer is on the State highway system and can be maintained and controlled more efficiently by a local jurisdiction. The conveyance is by Governor's deed at no cost to the local government. The deed contains a reversionary clause that returns the property to State ownership if it ceases to be used for public highway purpose.

When Federal funds participated in the cost of right of way or the construction the highway facility the provisions of 23 CFR 620 Subpart B apply to a relinquishment. The following facilities may be relinquished only with advance approval of the Federal Highway Administration (FHWA):

1. Frontage roads outside access control lines that serve as ramp connectors or connectors with the local street system.
2. Ramps that serve as connections for interchange of traffic between the Federal aid project and local streets.
3. Property located within the access control lines of any federally assisted project, or property that includes access control rights.

MaineDOT will advise the FHWA Maine Division Office of the location of any contemplated relinquishment subject to Federal oversight, allowing sufficient time for the FHWA to make office and field reviews. A description of the reason for the relinquishment, the jurisdictions involved and copies of conveyance documents will be provided to FHWA.

On completing a relinquishment subject to Federal oversight MaineDOT will send FHWA, for record purposes, a map identifying the location and Federal project number of facilities and real property relinquished,

The Legal Services Office prepares an agreement with the municipality. The Property Office Records and Research Unit adds the agreement to the original acquisition document in its Deed File and notes it on MaineDOT's right of way plans.

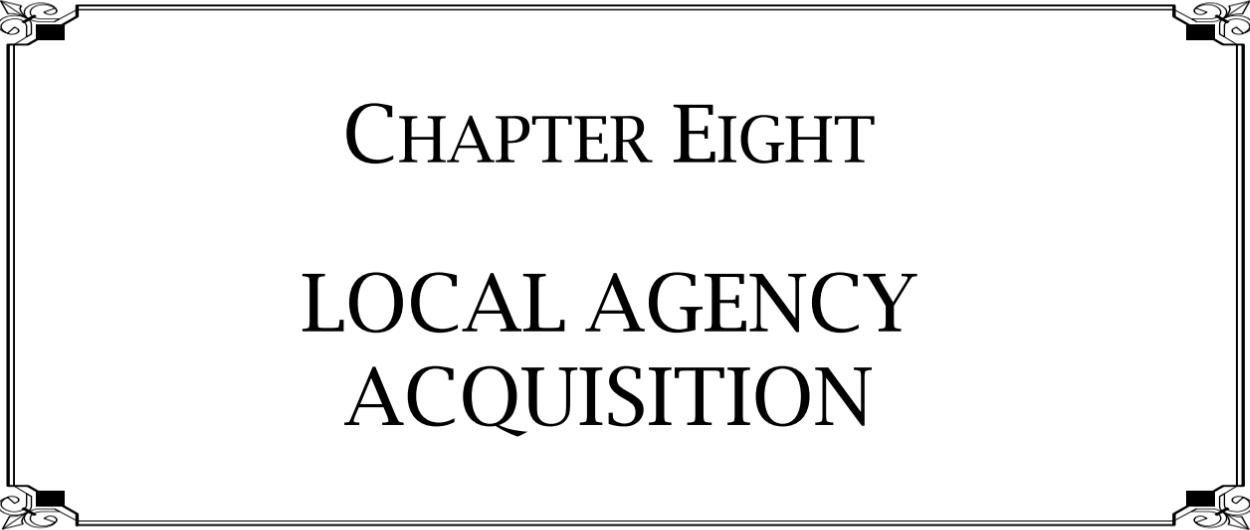
Since relinquishments are made to advance the public interest MaineDOT does not require payment from the local jurisdiction for the value of property transferred.

#### **7-7.07 Encroachments**

Federal Regulations, 23 CFR 1.23 (b) and 23 MRSA Section 1401A require that the State highway department shall be responsible for preserving the right of way free of all public and private installations, facilities and encroachments except those of permitted public utilities.

Encroachments within the right of way should be identified early in the project development process as part of the development of the existing conditions plans.





CHAPTER EIGHT

LOCAL AGENCY  
ACQUISITION

MAINE RIGHT OF WAY MANUAL

*December 2010*

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# CHAPTER EIGHT

## LOCAL AGENCY ACQUISITION

### 8-1 LOCAL AGENCY ACQUISITION POLICY

#### 8-1.01 Partnering with Municipalities

Citizens of the State and the community benefit when local officials acquire right of way under agreement with the Maine Department of Transportation. Local officials know the needs and concerns of citizens. Property owners in the path of highway development are more likely to amicably settle property acquisition claims on the basis of fair market value when they are approached by officials they know, who share the same community interests. This enables highway projects to be completed expeditiously and at reasonable cost. It also results in a high degree of citizen satisfaction with the right of way process and the completed project.

Private ownership of property is a basic American right that is protected by the United States and the Maine Constitutions. The taking of property is constitutionally conditioned on public necessity and on payment of just compensation for property that is acquired for a public need. Federal and State legislative enactments provide additional citizen protections and rights. These control the process by which property is acquired and are intended to insure that persons who are affected by acquisition are not disproportionately injured by projects that are intended to benefit the public as a whole.

The Maine Department of Transportation (MaineDOT) assists municipalities to acquire real property that is needed for highway projects in compliance with Federal and Maine law. This Chapter sets forth basic requirements of law and State policy. It describes and explains the critical steps in the property acquisition process. The objective is to enable local officials to proceed with confidence that they are conforming to all requirements of the law, reducing the amount of time devoted to the research and study of procedures and rules.

This Chapter does not address unique or complex situations. Right of way acquisition is a human endeavor. Circumstances will arise that are not addressed by this brief coverage and that may be outside the experience of officials charged with this function. To address this situation, MaineDOT assigns a liaison representative to advise and consult on project right of way issues and problems. The assigned MaineDOT staff will have varied statewide experience and will provide practical advice that conforms to applicable law and regulations. In addition, the MaineDOT representative will strive for program consistency so that citizens are treated fairly and equitably, without regard to the part of the State they live in or the nature of their occupancy or type of acquisition.

#### 8-1.02 Administration

Local Agency projects are administered by the Local Project Administration Unit in the Bureau of Project Development Multimodal Program. Projects that will be developed and delivered

locally are identified early in the in the work plan development process. Generally, MaineDOT support and guidance will be provided by the Multimodal Program. A Project Manager (PM) would be assigned to oversee locally administered project and would arrange for resources within the Department to assist in this oversight. This PM would request a Right of Way liaison from the Property Office to assist the Local Agency in their Right of Way needs.

### **8-1.03 MaineDOT Services**

The Department will perform the following activities with regard to locally administered right of way acquisition projects:

1. Insure that the project is on the MaineDOT Work Plan and that Federal funding is committed, if applicable. The assigned Senior Property Officer will assure that proper R/W authorizations are in place
2. Consult with local officials to identify the scope, schedule and cost of right of way acquisition. Generally, if the acquired property will become State owned, the Department will be responsible for the acquisition. If the property will become municipally owned, the local agency will be responsible for the acquisition with assistance from the Department.
3. Prepare an agreement in consultation with local officials defining the State/local project responsibilities.
4. Provide current and continuing advice on the application of State and Federal laws and regulations concerning right of way acquisition to specific project and parcel problems and situations.
5. Provide revisions and updates to regulations, policies, procedures and guidance material.
6. Provide training to local staff that are or will be engaged in right of way acquisition. Training is normally delivered through an agreement with professional organizations including the National Highway Institute, the International Right of Way Association or the American Association of State Highway and Transportation Officials.
7. Monitor the performance of right of way activity in conformity with MaineDOT's Quality Assurance/Quality Control Program. See Chapter 10 for further detail.
8. Provide referrals of qualified and experienced private service providers in right of way functions, including appraisal, negotiations, relocation, legal services and title work.
9. Provide reimbursement for eligible costs based on supported claims that are submitted by the local jurisdiction.

The assigned MaineDOT Senior Property Officer will perform many of the above services. The municipality shall maintain continuing contact with the representative through the property acquisition phase of the project. Normally, the Senior Property Officer will meet with the responsible municipal officials at an early stage in the project to review policy questions and the project schedule and to discuss any critical or complex cases.

For all property acquired, whether acquired by the Municipality or the Department, it is the Department's ultimate responsibility to insure that the acquisition is being accomplished in accordance with all applicable State and Federal laws, regulations, and policy. Coordination between the Department and the local agency can be an essential element in providing that assurance. The Senior Property Officer assigned to the project will closely monitor the acquisition activities of the agency on a regular and ongoing basis.

#### **8-1.04 MaineDOT/Municipality Agreement**

A formal agreement defining the roles and responsibilities of the municipality and the Department will be executed for every project on which a municipality will assume responsibility. This is a comprehensive agreement covering all phases of work, including right of way. The agreement will normally provide for complete assumption by the municipality of all right of way acquisition responsibility as stated previously in Subsection 8-1.03. However, specific activities may be reserved for MaineDOT performance. This may include the relocation of residents who will be displaced as a result of acquisition. Any municipality opting to acquire right of way as part of project administration shall follow the requirements of the Uniform Act and the procedures outlined in this Manual.

The agreement will state that the standard of performance for right of way work will meet the requirements of the ***Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** (as amended)(***Uniform Act***). This Chapter sets forth the basic and minimum requirements of the ***Uniform Act*** for the acquisition of property where no relocation is involved.

The MaineDOT/Municipality Agreement is an open-draft document that is intended to address the circumstances of specific projects. MaineDOT staff will consult with local officials in advance concerning the scope and content of the agreement so that it is relevant to the project and meets the needs of both parties.

#### **8-1.05 Applicable Laws and Regulations**

The local agency performing property acquisition is subject to the same laws and regulations as if MaineDOT were the acquiring agency. Following is a brief summary of the legal authorities that control the acquisition of real property for right of way:

1. U.S. and Maine Constitutions. Both require public necessity and payment of just compensation for the taking of private property. Additionally, the U.S. Constitution requires due process when States acquire privately owned property.

- 
2. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970** (amended 1987). The **Uniform Act** is landmark Federal legislation that applies to all property acquisition for Federal or Federally-funded projects. States, including Maine, have enacted legislation that enables compliance with the Federal law. Maine, through State law, has extended its provisions to State-funded projects.

The **Uniform Act** extends a system of rights and protections to property owners, with corresponding obligations for acquiring agencies. It sets forth a process for establishing value (just compensation) and negotiating with owners to encourage amicable settlements, thereby minimizing having to resort to the courts for condemnation. An important part of the **Uniform Act** provides a system of protections and benefits to persons who are displaced as a result of public projects. The procedural provisions described in this Chapter arise from the requirements of the **Uniform Act**.

3. **23 CFR 710**. The **Code of Federal Regulations (CFR)** provides interpretive detail to Federal law and carries the full force and effect of Federal law. The above regulatory reference pertains to real property acquisition policy for highways.
4. **49 CFR 24**. This is the Federal regulation that sets forth policy in implementing the relocation provisions of the **Uniform Act**.
5. **Title 23 MRSA Part 1**. State Highway law contains provisions at Sections 61, 63, 73 through 246, 652 and 653 pertaining to the acquisition of real property and the relocation of displaced persons. Municipalities acquire property under authority of Title 23 Part 3, Chapter 304 (see below). However, this Chapter refers back to Sections 154 through 154E in Part I for purposes of determining damages to real property.
6. **Title 23 MRSA Part 3 Chapter 304**. This is the Maine Revised Statute pertaining to local highway law. Chapter 304 defines the acquisition of property for highway purposes.

The Maine Statutes referenced above are fully conforming to the detailed provisions of the **Uniform Act** and the implementing regulations in 23 **CFR** 710 and 49 **CFR** 24.

#### **8-1.06 Transfer of Title to the State of Maine**

If a municipality acquires fee title and/or easements on a State or State-aid road, title to the facility will be transferred to the State of Maine when the project is complete. The process for the transfer will be determined in consultation with the Project Development Bureau's Property Office.

**8-1.07 Quality Assurance**

The Department is committed to continuously improve the quality, efficiency and effectiveness of its programs and services. In partnering with MaineDOT, a municipality or local agency assumes a role in quality assurance. MaineDOT's concept of quality is based on the premise that every person involved in the process at any level has a responsibility for advancing quality. Quality advancement is a responsibility of each employee. It is not exclusively a management, supervisory or audit function. The following activities are appropriate quality advancement measures that can be undertaken by the municipality performing real property acquisition:

1. Perform a second-party internal review of all documents before they are delivered to the property owner. This includes appraisals, agreements, and instruments of conveyance, offer letters, etc.
2. Provide relevant training to agency personnel who are engaged in specialized right of way activity (e.g., appraisal, negotiations, titles, relocation).
3. Perform quality spot checks of completed work concurrent with any ongoing project acquisition activity.
4. Perform peer reviews of work activity when there is more than 1 staff person involved in property acquisition for right of way.
5. Conduct phone or mail surveys of property owners following acquisition.
6. Develop internal procedures or policy to apply to specific recurring situations or circumstances in order to insure consistency and equitable treatment.
7. Perform joint project reviews between MaineDOT and local agency management staff.

The above are examples, but not an exhaustive list, of quality assurance actions. Other measures may be appropriate and effective depending on agency staffing, organization and the project. Specific quality assurance measures may be suggested by MaineDOT and incorporated into the MaineDOT/Municipality Agreement.

The agency quality assurance activities do not replace audits and reviews that are performed by State, Federal or local audit authorities. The Department has responsibility under 23 **CFR** 710.203(c) to monitor property acquisition activities conducted by political subdivisions to ascertain that right of way is acquired in accordance with the provisions of State and Federal laws and as required by Federal Highway Administration directives.



## **8-2 ACQUISITION PROCESS REQUIREMENTS**

The procedural items discussed in this Section are basic requirements of the ***Uniform Act*** in the process of acquiring real property for highway right of way. They are presented with minimum detail in order to afford flexibility to municipalities to adapt their process to their organization structure and the nature of the project. Additional information can be secured from the other chapters of this *Manual* that pertain to individual acquisition functions. Also, information and advice will be available from the Senior Property Officers and Property Office.

### **8-2.01 Title Investigation and Certification**

Title investigations and certifications may be performed by municipality legal staff, or may be contracted to private attorneys.

Municipalities will follow the standards established by the Maine State Bar Association for title examinations, including treatment of clouds or defects in title. Exceptions to these standards will be acceptable only on approval of the MaineDOT Office of Legal Services.

As soon as the right of way acquisition needs are identified for a project, acquisition to date titles will be prepared for all properties from which either permanent or temporary rights will be acquired. This work will enable detailed plotting of property lines and ownership information on plans.

Detailed guidance on title examinations for highway acquisition, including length of title search history for different types of takings is provided in Chapter 2. Section 2-4.03 provides guidelines for handling clearance of mortgages and other liens on property. On property acquired by deed, liens will be extinguished by securing releases, or the lien holder will named as payee on the check for settlement in accord with criteria for different types of acquisitions defined in Section 2-4.03.

A final rundown of title will be performed on all acquisitions immediately prior to recording the acquisition documents. The municipality will secure an attorney's certification that the municipality has secured the required necessary rights to construct the project as designed, and that all applicable Federal and State requirements governing these acquisitions are satisfied. A final project certification will be made using the format of the MaineDOT Certification statement referenced in Chapter 1, Section 2.02(b).

### **8-2.02 Right of Way Mapping**

The function of right of way mapping includes gathering and managing real property information and highway system information, and preparing the right of way plans and acquisition documents necessary to acquire property for highway projects. This section provides a brief overview of the mapping function. Detailed requirements for mapping are contained in Chapter 2.

The initial step in mapping is gathering data on ownership and improvements on each parcel of land the project is likely to affect. Mapping personnel then determine property rights underlying the existing or proposed transportation facility. Mappers will translate the information into preliminary right of way maps that show the existing limit of the right of way or other Public ownership. Mappers later prepare final right of way plans that document the new right of way limits of the project, basic design features including entrances and slopes, and the areas and types of acquisitions needed for the project. The final right of way plan serves as the basis for the parcel descriptions included in the property acquisition documents. A municipality will need to provide maps and property plats for the condemnation cases.

Municipalities may contract for performance of mapping functions. Guidance for the mapping process is contained in Chapter 2. The MaineDOT Property Office unit can provide detailed advice on mapping specifications or questions on specific project situations.

### **8-2.03 Determination of Just Compensation**

Just Compensation is the measurement of damages resulting from a taking under power of eminent domain. The agency's estimate of just compensation is determined by means of real estate appraisals, which are independently reviewed by a qualified review appraiser, or MaineDOT approved waiver valuation procedure.

The Just Compensation determination is typically made by an authorized official within the acquiring agency. MaineDOT recommends that on municipal acquisitions the official determining Just Compensation be the highest ranking administrative officer in the municipality, typically the Manager or First Selectperson.

Independent contract appraisers in Maine are certified or licensed by the Maine Department of Professional and Financial Regulation. MaineDOT maintains an Appraisal Register, which is a current listing of consultant appraisers who are properly licensed or certified and are otherwise qualified by experience and performance to appraise property to be acquired for highway right of way. MaineDOT recommends that a municipality contract with an appraiser on the Appraisal Register in accordance with Local Project Administration certification

When using an independent appraiser, consider the following:

1. Information Provided to the Appraiser. It is critical that the appraiser be provided with sufficient information to value the property rights to be acquired. The following should be provided:
  - a. Name, address and phone numbers of the owner(s);
  - b. Preliminary title information indicating current ownership and recent sales;
  - c. Description of the property rights to be appraised; and scope of work.
  - d. Plan sheet indicating property lines and taking, including grade changes and mitigation measures (e.g., driveway restorations or landscaping).
2. Provide Owner the Opportunity to Accompany Appraiser. The appraiser must provide an opportunity to the property owner to accompany the appraiser in an

- inspection of the property. This is a basic requirement of the ***Uniform Act*** and cannot be waived. The appraiser should document efforts to contact the owner as well as provide the owner's response to the offer to accompany the appraiser.
3. Appraisal Format and Number of Appraisals. When developing the appraisal, consider the following:
- a. The Department uses a Short Format Appraisal to value property when there are no damages or special benefits to the remainder and the highest and best use of the remaining property is not changed. This is discussed in Section 4-2.04.
  - b. The Department may waive a formal appraisal of uncomplicated acquisitions where the value of the taking does not exceed \$10,000. In this instance, just compensation is determined by a qualified person, not necessarily an appraiser, through a simplified valuation process based on direct comparison with available market sales information. In order for an assessor to be deemed qualified, they must be either a Certified Maine Assessor or a Certified Assessment Technician. This process is fully described in Chapter 3. It should be noted that the administrative acquisition process is used only when settlement can be reached on this basis after explaining the process to the owner.
  - c. Some acquisitions will require more than one appraisal to be performed. Circumstances for a second appraisal include the property or the acquisition being of high value or uncertainty existing about the highest and best use of the property either before or after the acquisition.
  - d. Before executing an agreement, the assigned Senior Property Officer will review the expected property acquisitions with local officials and jointly agree as to the proper appraisal format to be used and acquisitions in which more than 1 appraisal is appropriate.
4. Appraisal Review to Determine Value. The fair market value offer that will be presented to the property owner as just compensation is determined by a formal review of the appraisal(s) secured for the property. The appraisal review function may be performed by a qualified agency representative or by a licensed or certified contract appraiser who is not associated with the person who performed the appraisals. The appraisal review will include a check of the factual information and computations in the appraisal. It will also conclude to a fair market value for the acquisition based on an evaluation of support and reasonableness of the appraisal value conclusion. The review appraiser is responsible to secure any needed appraisal corrections or additional documentation. The appraisal review process is discussed in Section 4-5.

5. Approval of the Appraisal: After the review is completed, the appraisals will be approved at the MaineDOT by the Senior Property Officer overseeing the right of way phase of the project.
6. Written Statement of and Basis for Amount Established as Just Compensation. A written offer of fair market value must be prepared for presentation to the owner, accompanied by a summary statement of the basis for the amount the agency has established as just compensation. The summary must provide the following information to enable the owner to make a reasonable judgment concerning the amount of the offer:
  - a. A description and location identification of the real property and the interest in the real property being acquired;
  - b. Identification of buildings, structures and other improvements, including removable building equipment and trade fixtures, considered to be part of the real property to be acquired; and
  - c. The amount established as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and for damages to the remaining property must be stated separately.

#### **8-2.04 Negotiations with the Owner**

Agencies that acquire private property for public projects are aware of the need to be sensitive to property owner concerns as well as their rights under the Maine and the U.S. Constitution and laws. Most owners are willing sellers. However, the process is involuntary in that the owner does not have the option not to sell. Therefore, it is important to negotiate for acquisition with a high degree of preparation, knowledge about the public need (i.e., the project) and professionalism in contacts with owners. Before negotiations can begin, the municipality **must ensure that the NEPA process is complete** and that the appropriate documentations are in place. Failure to complete this step and initiating negotiations prior to NEPA complete will jeopardize all federal participation in the project. The Municipality must check with the MaineDOT liaison to insure NEPA Complete before proceeding.

The agency representative should present the written offer of fair market value in person, explain the project and the need for acquisition, and address any owner questions about the offer and the valuation process. In addition, the representative should discuss the project schedule and any effects of the acquisition or the project on remaining property. Sufficient time should be provided to the owner to consider the offer and to consult with others concerning the acquisition and the reasonableness of the offer which may be at least four weeks in the event condemnation is needed. This may require follow-up contacts. The agency has a responsibility to make every effort to acquire property expeditiously by negotiations.

The agency-determined fair market value is the basis for negotiations, but the offer should not be considered a “take it or leave it” alternative. Information provided by the owner may be

cause to revise the offer, for instance, if an important element of value was omitted from the appraisal or the acquisition was not properly described in the appraisal. Also, the agency has authority to administratively increase the offer amount if this would promote a settlement that would be in the overall public interest. Reasons for administrative settlement need not be based on valuation, but might consider other factors including condemnation costs, need for expeditious settlement or the risk of a court award that is significantly greater than the agency determination of value.

Any administrative settlement offer amount that is above the established fair market value must be fully explained in the file by the authorizing official, with an explanation as to how the offer is in the public interest. All negotiations contacts with owners should be documented on a diary log that states the date of contact, the parties contacted and a summary of the discussion.

Chapter 5 provides a more detailed discussion of the negotiations process.

### **8-2.05 Tenant-Owned Improvements**

The property acquired may include buildings, structures or other real property improvements that are owned by a tenant rather than the landowner. The tenant may have a lease that specifies that improvements be removed at termination of the lease. Tenant-owned improvements are more likely to be encountered on commercial use property. Examples include trade fixtures in a retail store or a panelized walk-in cooler for a restaurant. A tenant-owned improvement on a residential property might be an outbuilding (e.g., a storage shed) or a swimming pool.

Property that would be considered real property if it is owned by the landowner is also considered real property for acquisition purposes. The agency must acquire interest in tenant-owned improvements that are located on property that is acquired for the project. A separate offer of the value of the improvements must be made to the tenant owner, but only if the landowner first disclaims any interest in the improvements. If the landowner refuses to disclaim interest, the tenant is advised of this fact. The acquisition payment to the landowner will include the value of the improvements. Disputed ownership will then be a matter to be resolved between the landowner and the tenant.

The value of tenant-owned improvements will be determined as the greater of the amount that the improvement contributes to the fair market value of the whole property, or the value for removal, which is the same as salvage value.

### **8-2.06 Uneconomic Remnants**

An uneconomic remnant is a remainder property after acquisition that the acquiring agency determines has little or no utility or value to the owner. The ***Uniform Act*** requires that the agency offer to purchase uneconomic remnants. This requirement is based on the reasoning that an owner should not be burdened by having to maintain and incur taxes and other costs for a property remnant that is created by the public taking that is of no value or use to the owner. The decision to sell the uneconomic remnant is voluntary on the part of the owner.

**8-2.07 Donations**

The acquiring agency may accept donation of the property or any part of the compensation that would be due to the owner for the acquisition and must inform the owner of the right to have the agency appraise the property and be offered full fair market value. However, in accepting a donation, the agency must receive owner acknowledgement in writing that they understand their rights to an appraisal and just compensation and they release the acquiring agency from its obligation to provide an appraisal.. If the motivation for donation is a tax reduction, the owner should be advised that the Internal Revenue Service requires an independent third-party appraisal to support any deduction from taxes. The agency may, at its election, reimburse the owner's cost for an appraisal. The selection of an appraiser and compliance with tax law requirements is the property owner's responsibility.

It is important that the agency not take any action that could be perceived as coercive of the owner to donate property. An example of a coercive act would be to tell an owner: "All your neighbors have agreed to donate. They are going to be unhappy to know this project is delayed because of your refusal to donate". Donations negotiated for the project but prior to signing a project agreement, are still subject to Uniform Act acquisition requirements on Federally funded projects.

**8-2.08 Exercise of Eminent Domain**

The municipality acquiring real property should make every reasonable effort to settle amicably by negotiations as described above. If municipal officials determine after sufficient contacts that settlement based on negotiations is not feasible, and the project schedule requires immediate taking of property interests, title should be acquired by filing a condemnation order in the manner specified in 23 **MRSA** Chapter 304, Section 3023. The municipality will issue a check in the full amount of determined damages, fair market value, for delivery with the service of record copy of the condemnation order. Service on any one of multiple owners will be considered service on all owners. Title will pass to the municipality on service of the order of condemnation and check, or recordation of the deed or certificate as specified in 23 **MRSA** Section 3024, whichever occurs first.

A property owner who is not satisfied with the determination of damages that are awarded in the process of eminent domain as described above may appeal to the State Supreme Court in the county where the property lies. The owner's appeal to the Superior Court must be made within 60 days after the day of taking as specified in 23 **MRSA** Section 3029.

**8-2.09 Payment for Property Before Being Required to Surrender Possession**

The **Uniform Act** requires that no owner be required to surrender possession of real property before the acquiring agency pays the agreed purchase price. This requirement is served in condemnation by the process described in Section 8-2.08. In negotiated settlement, the municipality will deliver a payment check to the owner in the full amount of the agreed

settlement before the agency takes physical possession of the property or requires the owner to vacate the property.

#### **8-2.10 Payment for Expenses Incidental to the Transfer of Title**

The acquiring municipality will pay actual and reasonable costs of transferring the title to the acquired property, including:

1. Recording fees, transfer taxes and similar expenses, if any, that are incidental to conveying the property to the municipality;
2. Penalty costs for prepayment of any preexisting recorded mortgage encumbering the real property; and
3. The pro rata share of real property taxes paid by the owner for the period after the date of vesting title or the effective date of possession of the property, whichever is earlier.

#### **8-2.11 Written Advance Notice to Vacate Occupied Property**

No person who is lawfully occupying real property will be required to move from a dwelling or to move a business or farm operation without at least 90 days' written notice from the acquiring agency of the date by which the move is required. The occupant should have a reasonable length of time to find other adequate facilities (e.g., housing or replacement business site) and to effect an orderly relocation.

The timing, content and delivery of a notice to vacate are determined by the Relocation Program procedures. If issuance of a formal notice to vacate is required, the municipality should consult with the MaineDOT liaison representative to insure that the notice complies with all regulatory requirements.

Less than 90 days' advance written notice is permitted if continued occupancy of the property would constitute a danger to the person's health or safety. The determination and circumstances must be included in the project files.

#### **8-2.12 Relocation of Residents or Businesses**

The municipality may pay for the relocation of minor personal property items from the acquisition area to remaining property as a direct reimbursement claim based on the owner's actual and reasonable cost.

The relocation of residences, businesses or farms must be undertaken in strict compliance with Title 3 of the ***Uniform Act*** and Chapter 6 of this *Manual*. Relocation is a highly specialized activity. MaineDOT recommends that the municipality consult with the assigned Senior Property Officer at the earliest time that a possible residential or business displacement is identified. The circumstances will be reviewed and determination made as to whether the

relocation function will be performed by the municipality, contracted to a qualified private party or performed by MaineDOT staff.

It is important to know that property acquisitions that involve relocation will require significantly greater lead time than those acquisitions involving land only. There is an absolute requirement to make comparable replacement housing available to each displaced person or household and to provide at least 90 days' notice after a displacee is advised of the availability of replacement housing. The agency must schedule the project to accommodate the relocation time requirements.

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### 8-3 PROPERTY MANAGEMENT

The municipality is responsible for maintenance, security and management of acquired land improvements after acquisition. This includes the following items:

1. Rodent Control. Properties should be inspected after acquisition for rodents and other hazardous conditions. If rodent infestations are found, the municipality must take removal actions to preclude migration to nearby properties. This should be performed before the demolition of any improvements.
2. Hazardous Substances. Buildings containing asbestos or other hazardous materials must be demolished in compliance with State and Federal criteria for these conditions. See Chapter 7 for further information.
3. Security and Safety. The municipality is responsible to maintain safe conditions at acquired sites. This includes preventing blighting influences to adjacent property by removing accumulations of trash and taking measures to control vandalism and dumping. Buildings should be secured appropriately, including boarding or fencing if necessary. Particular attention must be given to removing conditions that could attract and be hazardous to children.
4. Demolition or Removal of Structures. Structures may be sold for removal from the site or be demolished. If structures are sold, the municipality must use a fair and open process for selecting a buyer, require a cash security deposit or bond to guarantee performance, and require insurance to indemnify the municipality and the State from any liability.

The municipality may demolish structures with its own forces or contract for demolition prior to construction, or removal may be included as a work item in the highway construction contract.

The owner of acquired land may retain ownership of structures for removal to remaining property. This should be arranged during the negotiations for the property, with appropriate adjustment to the fair market value to reflect the retention value of the structures.

5. Rental of Acquired Property. Normally, the construction schedule will preclude the rental of acquired property prior to project construction. If the project is delayed or property is acquired significantly in advance of project need, the municipality may allow occupancy for public or private use. If rented, the amount charged may not exceed what is appropriate for short-term occupancy in the area. The rental or use and occupancy agreement should specify that occupancy after agency acquisition does not create any right or obligation by the municipality or MaineDOT for relocation benefits of any kind.

Any revenues that are generated from the rental of property or the sale of improvements will be applied to reduce the net cost of the project.



## **8-4 PARCEL AND PROJECT RECORDS AND REPORTS**

### **8-4.01 Parcel and Project Files**

The acquiring agency will keep a separate file for each real property acquisition and a file for the right of way project as a whole. The records will be sufficient to demonstrate compliance with applicable laws and regulations. The following will be included in the parcel and project files:

1. Right of way map or plan showing the right of way acquired, including parcel numbers property lines, area acquired and structure improvements and fences;
2. Project plans and property plats, sketches or descriptions;
3. Property ownership information, including title reports;
4. Appraisal Reports and related assignment and contract documents;
5. Statement of determination of fair market value;
6. Offer letters to property owners;
7. Negotiations logs or contact sheets;
8. Correspondence with property owners and MaineDOT;
9. Settlement agreements and contracts and justifications for administrative settlements;
10. Condemnation documents and filings;
11. Credits for sale or rental of property; and
12. Documents relating to property management or the rental or sale of property and structures.

### **8-4.02 Project Summary Records**

Project summary data should be maintained as agreed in consultation with MaineDOT for each project. This may include a summary sheet showing key dates for each parcel, indicating the following:

1. Appraisal assignment,
2. Date the appraisal was received,
3. Date and amount of the fair market value that was established,

4. Date a written offer was presented to the owner and negotiations were initiated,
5. Date and amount of the settlement,
6. Date condemnation was filed,
7. Date the title was transferred,
8. Costs of excess land and any uneconomic remnants acquired,
9. Incidental expenses by parcel, and
10. Cost of construction items performed for mitigation of damages.

The specific project summary data will vary with the type of project and character of work to be performed. Projects with relocation may require a different data set.

MaineDOT and the municipality are subject to audit by State authorities, the FHWA and the U.S. Department of Transportation. Beyond the information noted above, sufficient documentation should be retained in files to track the origin and basis for any costs that are charged to the project as specified in 49 **CFR** Section 18.42.

The Department provides summary information on acquisition and relocation annually to the FHWA in order to carry out national program reporting responsibilities. The municipality will provide contributing information on projects under its responsibility.

#### **8-4.03 Acquisition Policy Resources**

The following Right of Way Program information resources will be provided to the municipality on initial assignment of responsibility for right of way project acquisition:

1. The MaineDOT *Right of Way Manual*;
2. The FHWA ***Real Estate Acquisition Guide for Public Agencies***;
3. ***Maine Revised Statutes*** Annotated, ***MRSA*** Title 23;
4. U.S. ***Code of Federal Regulations***, 23 ***CFR*** 710–712, and 49 ***CFR*** 24; and
5. Policy memoranda and guidance issued by MaineDOT and the FHWA.

#### **8-4.04 Confidentiality and Retention of Records**

The municipality should insure that all parcel and project files relating to appraisals and negotiations are secure and that only those persons qualified to access the files are allowed to view them. These records are not available for public information except as noted below and their integrity should be carefully maintained. Access to confidential records should be restricted to officials of the municipality, MaineDOT, the State Auditor and the Federal Highway Administration. Because these data provide the documented support for the establishment and payment of just compensation required by law, they should be secured in a safe area with

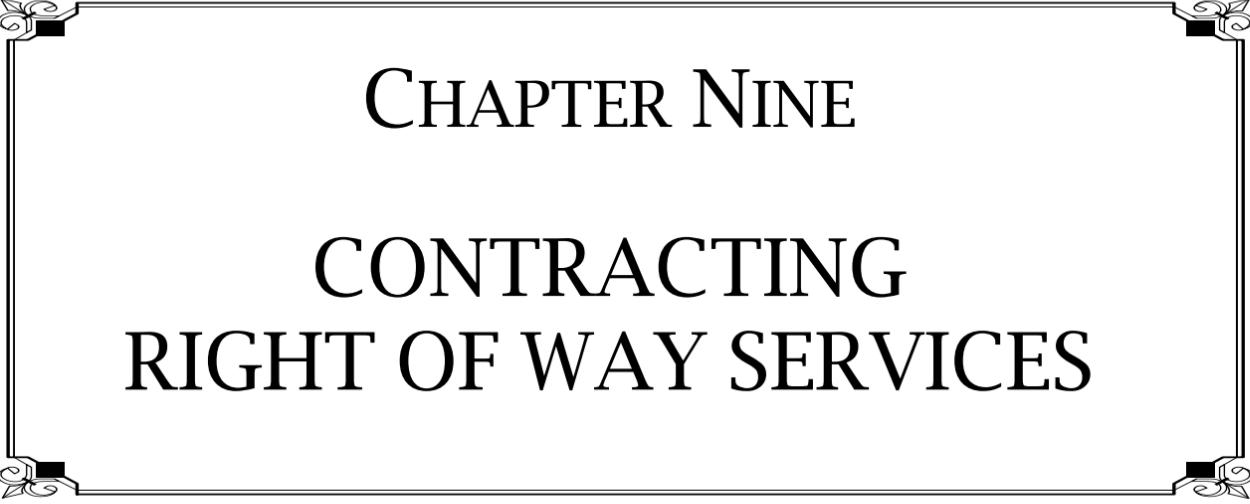
backup records developed as considered necessary. This is especially important if the data are maintained in computerized form.

Project and parcel records relating to appraisals and negotiations will be open to public inspection 9 months following the completion date of the project. Records relating to claims appealed to the Superior Court will be open to public inspection following the award of the Court.

Notwithstanding public availability of appraisals and negotiations records above, parcel records may contain information of a personal nature relating to claimant income, assets, tax information etc. This information may be protected from disclosure under privacy laws. Officials should consult the local agency or MaineDOT Chief Legal Counsel before making records available.

The municipality will retain records in accordance with the MaineDOT records retention policy as provided in the MaineDOT/Municipality Agreement.





CHAPTER NINE

CONTRACTING  
RIGHT OF WAY SERVICES

MAINE RIGHT-OF-WAY MANUAL

*December 2010*

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# CHAPTER NINE

## CONTRACTING RIGHT OF WAY SERVICES

### 9-1 CONTRACTING RIGHT OF WAY SERVICES — GENERAL

#### 9-1.01 Role of Contracted Services in Right of Way

The Department maintains a fully qualified and broadly experienced professional right of way staff consisting of personnel who deliver right of way for scheduled construction projects, and administer the Right of Way functions within the Department's Programs. The MaineDOT Right of Way staff is sized and positioned to accommodate normal project workload demands and acquisition complexity. Right of way services are contracted to private service providers to augment staff resources under the following circumstances:

1. Meet peak project workload requirements that cannot be met by MaineDOT staff.
2. Provide specialized expertise to address unique property acquisition situations.
3. Provide services on short notice to unexpected program needs.
4. Provide timely service in areas of the State that cannot be efficiently served by staff.
5. Meet temporary, urgent or occasional need that cannot be accommodated by MaineDOT staff.

#### 9-1.02 Purpose of the Contracting Procedure

The purpose of the right of way contracting procedure is to set forth a consistent, equitable and effective process to assess contracting needs, evaluate qualifications, contract for services and provide guidance and oversight of service providers.

#### 9-1.03 Legal Authority

This policy conforms to the following legal authorities:

1. 5 **MRSA**, Section 1816-A – Personal Service Contracting;
2. 5 **MRSA**, Section 1825-B – Bids, Awards and Contracts;
3. 49 **CFR** 18.36(a) – Procurement; and
4. 23 **CFR** Part 200 – Title VI Civil Rights Requirements.
5. 23 **CFR** Part 710 Right of Way and Environment.
6. 49 **CFR** Part 24 Uniform Act

**9-1.04 Scope of Right of Way Contract Services**

Right of way services will normally be contracted on a project basis. However, specialized services may be required on an intermittent “stand-alone” basis as situations are identified that require services.

The following right of way functions may be contracted by the Department:

1. Preliminary ownership information;
2. Title investigation;
3. Preliminary mapping;
4. Project data collection;
5. Right of way cost estimates;
6. Final mapping;
7. Valuation services:
  - a. Appraisals
  - b. Appraisal Review
  - c. Supplemental Appraisal Services,
  - d. Dispute resolution counseling, and
  - e. Expert testimony;
8. Negotiation and acquisition services;
9. Relocation field services; and
10. Relocation assistance casework services.

The Department contracts regularly for appraisal services on a parcel or a project basis because this is a continuously recurring activity that is subject to wide workload fluctuations. The other functions will be contracted as a need is recognized, corresponding to the availability of MaineDOT property staff to perform work.

While the above functions may be contracted, the Department is responsible for and must perform the following:

- Determination of just compensation;
- Right of Way certifications;
- Determination of payees (title verification) for property and relocation payments;
- Approval of administrative and legal settlements;
- Approval of relocation payments;
- Referrals and other functions associated with the processing of unsettled parcels through the State Claims process.

**9-1.05 Civil Rights Assurance**

The Department will insure compliance with Title VI of the ***Civil Rights Act of 1964***. This requires that no person shall, on the grounds of race, color or national origin, be excluded from participation in, or denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the United States Department of Transportation.

The Department insures Title VI compliance in securing right of way services by advertising for contract services on the MaineDOT Contract Procurement Office's (CPO) webpage at **<http://www.maine.gov/mdot/cpo/>**. The Department affirms that it does not discriminate in the right of way contract selection process or in the evaluation of contractor performance.

## **9-2 DEPARTMENTAL CONTRACTING PROVISIONS**

### **9-2.01 Contract Procurement and Administration**

Departmental contracting procedures for services have significantly changed since the previous version of this manual. The *Consultant Contracts & Audit Process Review (July 2005)* created the Contract Procurement Office (CPO) which was charged with creating and overseeing contract procedures in accordance with State and Federal regulations.

One major feature of CPO is the dedicated role of specific personnel across the agency whose primary responsibility is contract related issues. These Contract Specialists (CS) are assigned to major program areas such as the Property Office. Project Development also has other Contract Specialist dedicated to the needs of its other Offices and Programs.

These CS provide first line contracting guidance to the unit as well as coordination with the Contract Procurement Office on issues that need more clarity. Individuals within the Property Office in need of external services are to use their respective CS to ensure that all contract procurement and administration practices are in accordance with the Department's *Consultant and Professional Services Manual (October 2009)*. This also applies to right-of way personnel within the respective programs in need of services.

The appropriate CS will assist the sponsoring contract administrator in selecting the correct firm by the appropriate procurement method, using the correct contract type, and using the correct payment method.

### 9-3 CONTRACTING RIGHT OF WAY FUNCTIONS

Traditionally, MaineDOT had contracted primarily for appraisals. Department staff has performed other right of way functions. Over the last several years, MaineDOT has begun to contract for acquisition, relocation and property management services and anticipates contracting a broader range of right of way services that will include the functions listed as 1 thru 10 in Section 9-1.04. Contracted services will be in conformance with this manual, State law and applicable federal regulations. Federal projects are governed by 49 CFR Part 24 and 23 CFR Part 710.

#### 9-3.01 Qualifications

Thorough and relevant qualifications criteria are necessary to fairly assess contract providers of right of way services. The Department conducts a Statewide Request for Qualifications (RFQ) every two years in order to develop a list of qualified firms, though the opportunity to be prequalified for these services remains open between the formal RFQs. This list is established to handle the Department's normal anticipated workload that may be assigned to private sector firms. The Department also has the ability to issue a project or task specific Request for Proposals (RFP) where it sees fit to do so.

Any Right of Way related General Consultant Agreements (GCAs) will be managed and administered by the Property Office. Program Senior Property Officers needing right of way services will coordinate contracts under these GCA's with the appropriate Contract Specialists.

The following are examples of the relevant information needed to make a fair assessment of qualifications of a firm:

1. Experience. Discuss the firm's similar work. Only include information on those projects for the specific office that will perform the work by the specific staff assigned to these projects.
2. Staff. Discuss the assignment of responsibility for various tasks to different units within the contractor's organization for the office that will perform the work by the staff assigned to these projects.
3. Subcontractors. Discuss any work that would be subcontracted to associated firms. Discuss the qualifications and experience of those firms and include resumes for the key professionals assigned to these studies.
4. Workload. Discuss the current and anticipated workload of the firm and major sub-consultants for the office that will perform the work by the staff assigned to these studies.
5. Project Right of Way Coordinator. Define who in the firm's organization will be personally responsible or "in charge" of right of way and relocation components included in the scope of work. Discuss that person's qualifications, provide a

resume, provide experience on similar projects, and discuss his or her present or anticipated workloads.

6. Organization Chart. Consultant to provide an organizational chart showing the entire team.
7. Project Coordination. Discuss project coordination with MaineDOT.
8. Form 254. Provide a completed Form 254 that is reflective of this type of work for the office that will perform the work by the staff assigned to these studies.
9. Services. Identify those services that your firm has interest in providing (see Section 9-1.04).

The qualification packets submitted should conform to characteristics of the functions to be performed.

### **9-3.02 Qualifications for Appraisers – Appraisal Register**

The qualifications for Appraisers who provide valuation services that are contracted on a parcel or project basis are discussed in Chapter 4. This includes a description of the Appraisal Register, which is the list of consultant appraisers who are pre-qualified to work for MaineDOT. The process discussed in Chapter 4 will continue. Appraisers on the Appraisal Register will be advised if there is a need to update or augment their qualifications to meet the criteria discussed in this Chapter. The qualifications required for Review Appraisers can also be found in Chapter 4.

### **9-3.03 Right of Way Functions – Scope of Services**

The qualifications packets submitted by the firms will address identify the services they wish to provide and their qualifications to do so.. The following sections discuss the scope of services for right of way functions.

#### **9-3.03(a) Preliminary Mapping**

The firms providing preliminary mapping services are required to provide the following:

1. Owner Data. The firm must gather the names and addresses of abutting property owners within the project limits. This data should be provided very early in the process to the Department prior to beginning the field survey. Provide the listing in a database format as a .dbf file and include the following data fields for each parcel:
  - a. Owner's name(s),

- b. Mailing address,
  - c. Tax map and lot number, and
  - d. Book and page reference for deed.
2. Maps. Include copies of full size tax map(s) encompassing the project area.
3. References. Include the reference materials used to develop the preliminary right of way plans (e.g., deeds, survey plans, town records).
4. Preliminary Plans. Prepare preliminary right of way plans in either a compatible computer format that is consistent with Department specifications or in a hard copy plot. For either format, the plans should include:
  - a. Include property lines plotted from deed, property owner information and existing plans correlated to the property markers as located in the field. This is intended to be an office plotting task to indicate property ownership limits and ownership and is not intended to involve property surveying of the parcels themselves. MaineDOT's concern and the consultant's focus should be on the location of the parcel frontage and sideline boundaries. The back line of lots should be shown where practical based on the size of the lot and availability of room on the plan sheet itself. These plans are not intended to be property surveys and will not require a Land Surveyor's stamp. Property lines reproduced directly from tax maps will not be accepted.
  - b. Include all existing easements and/or other property rights – located and identified.
  - c. Label each parcel depicted with property ownership information, including owner's name(s), parcel number and parcel total area.
  - d. Plat all parcel/property features (e.g., wells, septic systems, water lines, underground utilities).
  - e. For the existing centerline alignment, tie into any existing centerline alignments from previous projects, if there are any in the area. This information is available from the MaineDOT Mapping and Research Section.
  - f. Note any references used (e.g., private surveys, DOT file number of plans, county layout).
  - g. Identify the firm's name on every sheet with the following or similar note  
"Apparent property lines and existing right of way determined and plotted by \_\_\_\_\_."

*Note: The plotting of the property lines will be the sole responsibility of the consultant. The consultant agrees to perform all work arising out of this agreement in a reasonable and prudent*

*manner and according to industry principles and practices. The consultant agrees to perform additional work as may be necessary to correct any negligence, errors or omissions in all work required under this agreement without undue delay and without additional cost to the Department. See Chapter 2 for additional detail.*

### **9-3.03(b) Title Investigation**

Title searches are prepared to satisfy the legal requirements as mandated in 23 MRSA and to support acquisition tasks. Title searches are generally ordered after the Project Team establishes a conceptual project scope that includes the anticipated right of way acquisition needs. The following are the levels of searches that are requested by the surveyor/mapper of a project team based on the impacts to the property.

1. Preliminary Investigations. This level of title investigation is primarily in support of the preliminary mapping effort as described in Section 9-3.03(a). The principal deliverable work product is a compilation of copies of the current deed descriptions for all properties abutting the proposed project. The department may request these copies be supplied to those individuals who are preparing the preliminary right of way maps at an early stage in the project development process to aid in the initial placement of property line data on the maps.
2. Deed Only Searches. This type of search is requested when the department anticipates that it will only need temporary property rights. A deed only search is a simple compilation of the current deed, a Grantor schedule only of the current owner from their acquisition forward and an abbreviated cover sheet.
3. Acquisition to Date Titles. All properties that will have permanent rights acquired as part of the project will have an acquisition to date title inspection prepared. The acquisition to date title includes:
  - a. A copy of the deed into the current owner;
  - b. A drawing or sketch of the property description as given in the deed;
  - c. A summary title which includes:
    - 1) A complete schedule of all index entries for the current owner from the deed up to the date that the title investigations are begun (All titles for the project should be scheduled through the same date.);
    - 2) An abstract of all instruments in the chain of title from the current owner forward (The instruments should be copied, not abstracted, when there is a change of description or other pertinent new material is given.);
    - 3) A summary chain of title showing all instruments of record resulting from the schedule of index entries and;

- 4) A cover sheet showing the owner of record and other information as indicated on the form;
- d. A project inventory listing all owners of record by parcel number; and
- e. A listing of any problems that need to be resolved by parcel number together with a report on any measures to cure or additional information gathered by the abstractor.

Finally, the abstractor must be prepared to do any additional preliminary title work that is required for the mapper to complete plotting the property lines.

- 4. Full 40-Year Titles. Following establishment of the final project scope, but before development of final right of way plans, the Title Reports for all proposed fee acquisitions and acquisitions involving significant areas of previously claimed prescriptive easement right of way (AKA “wrought portion”) will be upgraded to full 40-year Title Reports in compliance with Maine Bar Association standards. The findings of these Title Reports will be incorporated in the final right of way maps as the basis for the final phases of property valuation and acquisition activities.

At the completion of valuation and negotiation activities, but before actual acquisition, either by document or by eminent domain, all project titles will be updated and a memo will be submitted noting any ownership or mapping changes.

Three weeks prior to any scheduled acquisition, the Title Office will request checks according to the Report at the approved compensation levels, prepare appropriate acquisition documents (either a deed or a notice of taking), arrange for filing of the necessary record documents, and distribute the payments and required landowner notices.

### **9-3.03(c) Project Data Book**

The Project Data Book is a cumulative collection of factual data that are gathered in support of the preparation of project right of way cost estimates, Administrative Acquisition Worksheets and appraisals for a project. The Project Data Book consolidates general data for a related group of individual parcel reports in order to prevent duplicating items such as comparable data sheets, studies, and general conclusions that relate to the area or region (e.g., time, utility, and location), area and neighborhood descriptions, general exhibits, trend studies, etc. On large projects, the intent of the Project Data Book is to promote project consistency and efficiency. The Project Data Book is limited to factual data. Analysis should be included in individual Parcel Reports. It is intended to become an integral part of each Parcel Report by reference.

The Project Data Book content is intended to reflect the scope and complexity of the project it represents. The following summary of procedures and content is intended to outline the

required level of effort for a complex project of significant scope. The content of the data package for non-complex projects may be modified appropriately to suit the intended need for these data in relation to the actual project under development. The scope and content of the Project Data Book are to be mutually agreed on by the consultant and the Contract Administrator as a part of the scope of work for any specific project agreement.

Data collection must continue through submission of the last appraisal on the project. If the data, market, trends or references change during an appraisal project, appropriate additions to and modification of the completed Project Data Book must be made (e.g., Page 12- Revised June 13, 2000).

Include the following information elements in the Project Data Book:

1. Title Page. The Title Page should:
  - a. Include the project location by municipality, project number and PIN.
  - b. Identify MaineDOT as the client.
  - c. Give the name and address of the individual(s) making the Project Data Book.
  - d. Note the effective date of the Project Data Book.
2. Table of Contents. List the major parts of the report and subheadings.
3. Qualifications. Provide the qualifications of all persons providing significant contributions in preparing the Project Data Book.
4. Assumptions and Limiting Conditions. Assume that the project will be constructed according to the current design plan, unless there is information to the contrary, which must be cited by source and in specific detail. State any assumptions that are applicable to the research and assembly of the Project Data Book. Include any special instructions or directions furnished by MaineDOT.
5. References. Include data sources such as specific records and names and titles of individuals (e.g., municipal officials, contractors and real estate professionals providing information).
6. Description of the Project, Maps, Aerial Photographs, etc. Concisely describe the transportation project improvements and any changes in access, frontage, elevation, drainage, utilities, proximity, etc. Include a project location map within the municipality or area. All maps are to include a north arrow and identification of the project and municipality. All maps and plans may be bound as facing pages opposite the description, tabulation or discussion they concern.
7. Area and Neighborhood Analysis. Present a narrative discussion and analysis of the following:

- a. Define and delineate the market area.
  - b. Identify and analyze the current supply and demand conditions that describe the specific real estate market.
  - c. Describe the existing supply of property for the specific uses within the defined market area affected by the project.
  - d. Describe historic uses, parcels or sites and the project's effect on the same.
  - e. Discuss current patterns of land use and trends in the area first and the neighborhood second (e.g., new construction planned or underway, vacant sites as potential competition for the subject(s), adequacy and availability of utilities, access, impaired sites nearby).
  - f. Discuss current economic factors affecting the area and neighborhood (e.g., population, employment, income characteristics, interest rates, rents, zoning, and other regulations). Discuss the probability of future changes for these factors, as relevant.
  - g. Provide a description of the neighborhood both before and after completion of the transportation project, as proposed.
  - h. Forecast how anticipated changes in the inventory of real property affected by the project will affect the subject neighborhood.
  - i. Attach and provide a brief evaluation of any published economic, damage, cost, or other general studies that will be used in any valuations.
8. Market Data. State the extent of the process of collecting, confirming and reporting data. The statement of scope does not need to be lengthy. If the property is improved and land-only valuations are required, include a statement limiting the scope. If before and after appraisal(s) are anticipated, the data collection process must include sufficient comparable sales of the before property and comparable sales of the after property.

The market data, comparative or direct sales comparison approach is the most easily understood method for the presentation of market value and just compensation. Most often, greater reliance will be placed on this approach than all others. This is the only approach required for most parcels. Consequently, it is imperative that a sufficient amount of highly comparable market data be included for analysis in order to provide a sound basis for the conclusions drawn from the direct sales comparison approach.

Current, accurate comparable sales information is essential in sufficient quality and quantity to demonstrate that the valuation conclusions are representative of the local

market. Data must provide a sound basis for valuation of both the before parcel and, in the case of a partial acquisition, the after acquisition condition of the remainder. Three comparable sales are generally considered the minimum acceptable support for simple valuations; more are recommended when available, especially for complex appraisal problems. The Marketing Data should include the following:

- a. Neighborhood Sales. Include an analysis of all recent sales of similar properties in the subject neighborhood. Discuss and analyze the existing supply of available similar properties (the competition). If pertinent, discuss the sales history of relevant comparables: time on the market, changes in the asking price, resale of the same property and sales agreements that fell through.
- b. Value Indicators. The following indicators of value may be included in the Project Data Book for the purpose of illustrating trends or extremes but may not be used as the only basis for value:
  - 1) Unconfirmed sales,
  - 2) Listings,
  - 3) Earnest money agreements,
  - 4) Offers to purchase,
  - 5) Lease or purchase options,
  - 6) Sales to or from agencies or utilities with the power of eminent domain,
  - 7) Estate sales between relatives,
  - 8) Trades and/or exchanges,
  - 9) Sales with generous financing terms,
  - 10) Foreclosure sales,
  - 11) Sales made under duress,
  - 12) Bankruptcy estate sales, and/or
  - 13) Auctions.

Any deviation from the foregoing is unacceptable except in rare cases where no other data exists and the Appraiser submits the documents, verification and analysis of date to the Senior Property Officer for approval for use in an Appraisal Report. Sufficient market data are not always available to evaluate all properties subject to the particular type of acquisition. When market data are limited, or weak in comparability, the Appraiser must demonstrate a legitimate, concerted effort to obtain other types of supporting data.

- c. Inspection of Sales. Inspection of all sales included in the data package is essential. If a timely field inspection is not practical due to weather or other factors, additional documentation demonstrating familiarity with the sales

(dates of earlier inspections) must be included. Inspect the sales at the earliest opportunity. Only under extreme and unusual circumstances may a waiver be granted for the inspection of sales. The waiver should be in writing and should be fully explained and supported.

- d. Confirmation of Sales. An Appraiser is responsible for inspecting and personally confirming all market data used for Appraisal Reports. Actual open market sales are considered most reliable when the Appraiser verifies the facts with both buyers and sellers and, in some cases, with agents to the transaction through direct contact. Not every sale can be confirmed by personal contact with the buyer and the seller. In these instances, the Appraiser should verify the sale with the agent, if one was involved or other source of reliable information, and state the conditions and source of verification in the comparable data sheet.
- e. Date of Sale. The date of the meeting of the minds or the earnest money agreement date should be used as the date of sale if possible. Otherwise, use the date the deed of transfer was signed, not the date of recording, as the date of sale.
- f. Use of Data Gathered by Others. Market data on file with MaineDOT may be shared on request, with no obligation on the part of MaineDOT for its accuracy and relevance. Any staff or contract valuation professional who receives market data from MaineDOT is responsible for verifying, confirming, inspecting and conducting further independent research of this data.
- g. Comparable Market Data Sheets. Include a comparable market data sheet (Sale Sheet) for every sale or value indicator. Use of the MaineDOT form is not mandatory, but all pertinent data shown on the form must be included in each market data submittal. Descriptions must be clear enough to locate each sale in the field.

Estimate the land/improvement allocation on each improved property. The basis for the allocation (i.e., supporting data, reasoning, and correlation) must be provided. A statement that the purchaser or seller allocated the values or that it came from another appraisal is unacceptable without further support.

- h. Photographs. Attach current photographs of each comparable property to provide the reader with a clear understanding of the property. This requirement applies to both vacant and improved properties. Each photo as a minimum will be identified with the following information:
  - 1) Project identification number,
  - 2) Sale # or lease #,
  - 3) Location (of comparable),

- 4) From (position photo taken from),
    - 5) Date,
    - 6) Town,
    - 7) Grantor and grantee or lessor and lessee,
    - 8) Looking (direction), and
    - 9) Photo taken by.
  - i. Sales Summary Chart. Attach a summary chart or recapitulation of the sales data.
  - j. Sales Map. Include a suitable sales map (or maps) that show by sale numbers the location of each sale referenced and the location of the subject property/project location. The map(s) must also show the north arrow and must be clear enough to easily follow and locate the sales in the field.
9. Supporting Documentation and Exhibits. Attach any documentation or supporting data that may be pertinent to the report, including:
- a. Title Reports;
  - b. Specialty Reports;
  - c. Special instructions received from MaineDOT;
  - d. Legal opinions or references;
  - e. Cost-to-cure estimates and calculations;
  - f. Cost data relied on to establish the contributory value of improvements acquired. Improvements must be valued as they contribute to the overall property value. Depreciated replacement costs may be an accepted measure of value if it is demonstrated that the market responds in that manner. The standard of valuation is the fair market value of the entire property. Totaling the independent money values of a property's separate parts is unacceptable;
  - g. Reproduction costs of new buildings and improvements;
  - h. Building Inspection Reports;
  - i. Rental and cost data survey;
  - j. Zoning ordinances and other land use regulations and maps;

- k. Copies of zoning change applications, maps, meeting minutes, rezoning decisions to demonstrate that rezoning is reasonably probable, if valuation is to be based on anticipated imminent and probable rezoning;
- l. Comprehensive planning documents and maps;
- m. Subdivision covenants, conditions and restrictions;
- n. Environmental or regulatory restrictions;
- o. Leases;
- p. Economic studies;
- q. Environmental studies or analyses performed. Discuss any hazmat on project properties or adjacent properties; recent cleanup on the project or adjacent properties or major cleanup in the neighborhood. Include information on pending actions that may impact the environmental standing of the subject parcel;
- r. Current dated right of way plans;
- s. Tax maps;
- t. Flood plain maps;
- u. Wetland maps;
- v. Utilities maps;
- w. Soils survey maps, soils descriptions and uses, particularly for agricultural use;
- x. Design reports and project descriptions (design plans should be retained until superseded or the project is closed out.); and
- y. Assessed values, real estate taxes, trends and assessment ratios.

See Chapter 4 for additional details.

#### **9-3.03(d) Valuation and Appraisal Services**

When obtaining valuation and appraisal services, the following will apply:

1. Short Format Appraisal Preparation. The Short Format Appraisal involves the preparation of formal documented Appraisal Reports in compliance with the Department's Short-Form Appraisal specifications. This form of appraisal is used in connection with uncomplicated acquisitions where adequate market data are available and there are no issues of special benefits or severance damages.
2. Before and After Appraisal Preparation. This involves the preparation of detailed Appraisal Reports of the before and after format in compliance with the Department's Appraisal Specifications.
3. Supplemental Appraisal Services. Supplemental appraisal services involve providing supplemental appraisal services in conformity with the above noted appraisal activities. These services may be required due to changes in project scope, change in ownership, discovery of unanticipated property impacts, and updating Appraisal Reports on unsettled acquisitions following eminent domain takings.
4. Dispute Resolution Counseling. These services involve working with the Department's Legal Services Division and others in preparation for State Claims Commission hearings or Superior Court proceedings.

Representative tasks may include participating in pre-hearing/trial conferences, preparing supplemental documentation to appraisal products, assisting in planning for the presentation of testimony and advising Department personnel on the valuation-related impacts of proposed settlement negotiations.

5. Expert Testimony. This involves representing the Department as an expert witness on matters of real property valuation in adjudicative proceedings.

See Chapter 4 for additional details.

### **9-3.03(e) Appraisal Review**

The qualifications and procedures for fee review appraisers is the same as staff review appraisers. These details and some information regarding contracted fee review is located in Chapter 4 of this manual.

### **9-3.03(f) Negotiation and Acquisition**

#### **Department Responsibilities**

The Department will provide the Consultant with the following:

1. A copy of the project Estimate Sheet (Form VL-18) which summarizes the listing of recommended compensation levels, property owners and property rights required for the project;

2. Verification that necessary environmental and regulatory approvals are in place and that funding is available to support the acquisition(s);
3. A current set of design plans and cross sections, right of way plans and aerial photos, if available;
4. Copies of the project appraisals and valuation documents; including just compensation determinations;
5. Owner Contact Report (Form AQ-14);
6. A Negotiator's Certificate, and Negotiator's Statement (Forms AQ-5 and AQ-6);
7. Copies of applicable Department approved forms:
  - a. Land owner offer letters, (Forms AQ-1 and AQ-2),
  - b. Land owner assent form (Form AQ-15),
  - c. Work permits (Form AQ-4),
  - d. Administrative Offer Settlement Agreement (Form AQ-8), and
  - e. Other documents as may be appropriate to the proposed acquisition(s).
8. Copies of the acquisition brochure, "A Landowners Guide to the Property Acquisition Process"; and
9. Limited authorization to negotiate administrative settlements.

### **Consultant Responsibilities**

The Consultant will be responsible for:

1. Field Negotiations. The objective of the field negotiations phase is to personally meet with the owners, and establish a trusting professional relationship. The Consultant is responsible for insuring the owner is fully informed and understands:
  - a. The purpose and need for the project;
  - b. A general description of the overall project plans relating to typical sections drainage, traffic patterns, and schedule;
  - c. The impact of the project on each property (e.g., takings, horizontal and vertical alignment changes, drainage, drive grade changes);
  - d. The basis for the State's offer and the owner's rights and recourse if the offer is unacceptable;

- e. The schedule for acquisition, method of title transfer, who will be named as payees on the check, and the owners rights to cash the check without relinquishing appeal rights; and
- f. The name, address and telephone of the Department's project representative, should issues arise during the construction phase of the project.

The Consultant will meet these objectives in performing the following activities:

- a. Prepare the necessary paperwork before owner contacts.
- b. Highlight and annotating the plans to facilitate owner interpretation.
- c. Become familiar with valuation and appraisal materials; and just compensation determinations.
- d. Make appointments for property owner contacts.
- e. Initiate mail and telephone contacts with non-resident property owners.
- f. Conduct personal contact and negotiations with affected property owners.
- g. Maintain an up to date electronic summary log of all property owner contacts (Form AQ-14). This log should be available immediately upon request to the project Right of Way Manager. This will include:
  - 1) A listing of the items discussed with the owner (e.g., takings, grade changes, trees to be removed).
  - 2) Issues or concerns of the owner and any commitments made by the Consultant to the owner.
  - 3) Detail sufficient to address issues that may arise as the project evolves.
- h. Transmitting to the Department all landowner construction accommodation requests for consideration.
- i. Conducting personal follow-up contacts in response to landowner concerns and/or requests.
- j. To the extent that landowner agreement can be achieved, executing and witnessing appropriate settlement agreements, work permits, etc. Any administrative settlements above the approved offer require explanation and justification.

2. Acquisition Phase. At this phase of the acquisition process initial contacts have been completed, agreement reached where possible, and the process advances to the actual transfer of property rights. These rights will usually be transferred through the condemnation process using the power of eminent domain. The negotiator will have varied tasks at this point in the process. These include:
- a. The negotiator will complete and submit an updated status report; completed settlement agreements, contact reports, and project correspondence file, and submit them to the Department no later than 3 weeks before the condemnation date. This will serve as the basis to request final title verification, preparation of condemnation documents, compensation checks and landowner notification packets.
  - b. Following the filing of the Notice of Layout and Taking and the associated mailings to affected property owners, there is usually a number of land owner communications which will require the negotiator to conduct additional contacts, for the purpose of clarifying process, providing additional project information, and, if possible, negotiating an amicable settlement. The Consultant is responsible for a follow-up contact to all owners, in person, by telephone or letter at the Consultant's discretion, within 14 days of the condemnation date.
  - c. At, or about the "Condemnation Date" the development of the project is handed-off to the Project Resident. The Consultant will prepare and submit a report detailing elements such as negotiated construction accommodations, trees promised to be saved, assumptions regarding non-interference with septic systems, and other details, which will need to be communicated to those responsible for the construction of the project. A minimum telephone conversation with the Project Resident is required with an on-site meeting recommended.
  - d. By law, those acquisitions which are unsettled 60 days following the filing of the Condemnation Documents are referred to the State Claims Commission for the scheduling of a land damage hearing. During this 60-day period, it is expected that follow-up contacts will be made with the owner of each unsettled acquisition with the objective of resolving differences and gaining settlements.
  - e. At, or slightly before the expiration of the 60-day referral period the Consultant is required to make a final contact with each owner for a project status update and provide the property owner with a name and number of the Department's representative. The Consultant will submit to the Department a final status report detailing the status and details of each acquisition.
  - f. At the completion of the 60-day negotiations period, the consultant will turn over all files to the Department.

See Chapter 5 for additional details.

**9-3.03(g) Relocation Field Services**

From the earliest stages of the project development process, the relocation-related activities involve a varied group of tasks, examples of which include the following:

1. Perform all work in compliance with appropriate FHWA and MaineDOT guidelines.
2. Prepare appropriate Conceptual Stage Relocation Plans for Environmental Impact Statements or Environmental Assessments on larger projects, as necessary.
3. Inventory project corridors to assess potential project impacts that would require commercial sign relocations and residential and commercial dislocations.
4. Prepare detailed estimates of relocation costs and time requirements for the purpose of establishing project budgets and schedules.
5. Contact possible displacees prior to public hearings to avoid surprises and confusion at public hearings. Discuss the acquisition/relocation process and give them an overview of how the relocation assistance program works.
6. Coordinate with the Relocation Casework Provider in cases where it appears that there may be hardship issues involved, and assist the displacee(s) in requesting early acquisition procedures.
7. Attend public hearings to answer questions regarding relocation.
8. Coordinate with the valuation/acquisition functions to ascertain the probable magnitude of acquisition offers for the purpose of initiating a preliminary computation of eligibility for, and amount of, replacement housing allowances.
9. Work with local brokers, the Internet, newspapers and other sources to compile an inventory of available replacement housing, replacement rentals or business locations.
10. Develop documentation based on the most comparable available replacement properties in the computation of replacement housing allowances, replacement rental allowances, moving costs, reestablishment expenses or "in lieu of" payments.
11. Establish and maintain a file of all contacts and work products to document every phase of the development of the project. The contact reports must be kept electronically and available to the project Right of Way Manager immediately upon request.

**9-3.03(h) Relocation Casework Services**

Relocation services involving direct assistance to individuals or businesses normally come to an active phase at, or shortly before, commencement of acquisition negotiations. The acquisition and relocation assistance activities may or may not be conducted by the same person. The tasks associated with providing assistance are extremely variable, and may include, but not be limited to, the following:

1. Perform all work in compliance with appropriate FHWA and MaineDOT guidelines.
2. Coordinate with management, design, mapping, appraisal and displacees(s) for early acquisitions.
3. Help displacees prepare hardship letters requesting early acquisition.
4. Have paperwork (background information and applications for payments) prepared and ready for signatures, if practical.
5. Prepare and send "Notice of Intent to Acquire" as necessary.
6. Compute, request and deliver replacement housing allowances, replacement rental allowances or business relocation payments to owner(s), or tenant(s).
7. Develop documentation (bids, schedules, negotiated) for, and compute payments for, moving costs, incidental (closing costs) payments, mortgage buy-down, reestablishment expenses and "in lieu of" payments.
8. Assist affected abutters in coordinating the removal and/or re-installation of commercial signs outside the limits of newly acquired right of way and obtain necessary documentation for, and coordinate the payments for, all eligible reimbursable costs.
9. Prepare necessary documentation and prepare required applications, etc. for owner/tenant signatures.
10. Work with low-income tenants to establish income levels and ability to pay for housing within Federal Regulation guidelines.
11. Monitor moves, set up and attend closings, and inspect replacement housing for DSS standards.
12. Maintain contact reports and files for each relocation case history.

See Chapter 6 for additional details.

## **9-4 RIGHT OF WAY UNDER DESIGN-BUILD CONTRACT**

### **9-4.01 General**

A Design-Build transportation project includes the design and construction phases in a single contract. It is the intent of this section to allow maximum flexibility in the contracting and performance of property related activities as provided in State and Federal laws and regulations for design-build contracts. Any property related Design-Build contracting processes or procedures available under State and Federal law, but not explicitly addressed in this Manual, may be approved by the Property Office Director.

Under the Design-Build federal regulations (710.313), the construction may be phased or segmented to allow right-of-way activities to be completed on individual properties or a group of properties, thereby allowing right of way certification by phase or segment instead of the entire project all at once.

The Right of Way acquisition associated with Design-Build projects can be accomplished under the following general scenarios:

- MaineDOT may acquire the right of way in advance of the Design-Build Request for Proposals;
- MaineDOT may acquire the right of way concurrently with the Design-Build contract with right of way availability dates or acquisition durations included in the contract.
- Responsibilities for certain property acquisition responsibilities may be split between the Design-Builder and MaineDOT. Under this method, the contract will include specific time durations for MaineDOT to complete acquisition tasks upon approval of deliverables from the Design-Builder. Example: The Design-Builder may be responsible for property owner reports, right of way plans and appraisals. Once these deliverables are approved by the Department, MaineDOT would be responsible for activities for the negotiations, acquisitions and relocations within a MaineDOT determined duration of time specified in the contract.
- The Design-Builder may be responsible for any acquisition/relocation tasks allowable under State and Federal Law and associated regulations including but not limited to those functions listed in 9-1.04 items 1-10.

When right of way acquisition and relocation functions are included in a design-build contract, such a contract will normally have the right of way functions performed by qualified subcontractors reporting to the prime Design-Builder. This arrangement must incorporate a process that complies with Maine State law, this Manual, applicable Federal statutes, and implements the following regulations:

- The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations found in 49 CFR, Part 24\*.

- 23 CFR Part 710 in general and 23 CFR 710.313 that contains specific requirements related to projects where the right of way acquisition is included in the design build contract\*.
- 23 CFR 635.309(p) requirements for construction authorization as well as 23 CFR 636 for design-build.

\* The CFR requirements authoritatively interpret and implement the Federal Uniform Relocation Act and have the “full force and effect of law.”

In all cases, MaineDOT will assign a qualified employee as the project Right of Way Manager to serve as the first point of contact for all right of way issues for the project.

The purpose of the special right of way provisions under design-build set forth below is to enable benefits of the design-build concept to be realized while assuring that property owners and occupants have quality services and the same benefits and protections as would be provided if the right of way were administered under the traditional contracting process.

#### **9-4.02 Design-Build Contract Provisions**

The following is a list of provisions normally included in the request for proposals and/or the contract when right of way is included under a design-build contract. At the discretion of the Property Office Director, the actual contract provisions can be modified to reflect the various right of way clearance methods described in 9-4.01. To the extent the provisions of this section do not address specific issues associated with law, regulation or process, the provisions may be supplemented at the discretion of the Director, in consultation with the R/W Manager.

1. The Design-Builder will be responsible for delivering right of way acquired and cleared in full compliance with the implementing regulations of 49 CFR Part 24, 23 CFR Part 710 Section 313, the MaineDOT Right of Way Manual, and in compliance with Maine State Law. The Property Office Director may approve exceptions to the Manual in advance but only if there is full compliance with Maine and Federal Law and regulations controlling acquisition and relocation.

Conflicts must be brought to the attention of the MaineDOT Right of Way Manager designated for the project if there are any conflicts noted by the Design Builder between written authorities such as what is stated in the request for proposal (RFP) and the MaineDOT Right of Way Manual or other implementing regulations.

2. All resource plans for property related services for a design build project must be submitted to MaineDOT Property Office for review and approval before they perform work on the project. The Property Office will determine if the firms or persons in the plan are qualified for the associated assignments. People and companies on MaineDOT's current pre-qualified consultant firms list are qualified generally, and may or may not be well suited for complex assignments. A firm from the approved list may request authorization to use additional agents who have not already been pre-qualified. Each agent not on the current list that the firm intends to use must meet the requirements established by MaineDOT for those services. Any persons or companies not pre-

qualified must meet MaineDOT prequalification requirements for those services and be on the contractor's approved resource plan before commencing work.

3. The Design-Builder will submit a right of way action schedule to the Project Manager and Right of Way Manager for review and approval before initiation of right of way acquisition. This will include:
  - A relocation plan describing how the Contractors will comply with the requirements of Chapter 6 of this Manual. The plan will also include time estimates for relocation based on individual displacee needs, housing availability, and regulatory notice to move requirements.
  - Identification of buildable segments of right of way that may proceed to construction when right of way acquisition and relocation are complete and independent of right of way status on other project segments.
  - A proposed time schedule that includes prioritization of activities and performance of acquisition and relocation.
  - A cost estimate for performance of each right of way phase or function for which the contractor will be responsible.
4. The MaineDOT Property Office will determine just compensation, relocation benefit amounts, and any proposed use of Last Resort Housing for displacees.
5. The Design-Builder will develop a right of way tracking system to provide ongoing project status of appraisal, acquisition, and relocation. This system will include an up to date electronic contact report which includes summaries of discussions and correspondence with individual property owners.
6. The Design-Builder will develop a quality control system to assess performance of services and payments to owners and occupants and monitor progress in relation to the project schedule.
7. Proposed settlements above the established just compensation amounts and relocation program appeals will be referred to the project Right of Way Manager for decision or resolution under normal Departmental protocol.
8. After owners have been afforded a reasonable period of time to consider offers and negotiate settlements, the parcels will be referred to the Right of Way Manager for condemnation through the Property Office based on criteria MaineDOT establishes for the project and the process described in Chapter 5 of this Manual.
9. The decision to advance a segment or phase to the construction stage shall not impair the safety of or in anyway be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of the project.

**9-4.03 Design-Build Right of Way Specifications**

The Design-Builder is expected to fully comply with all of the specific requirements related to right of way acquisition and certification as stated in the FHWA regulations Title 23 CFR Section 710.

**9-4.04 Certification of Right of Way**

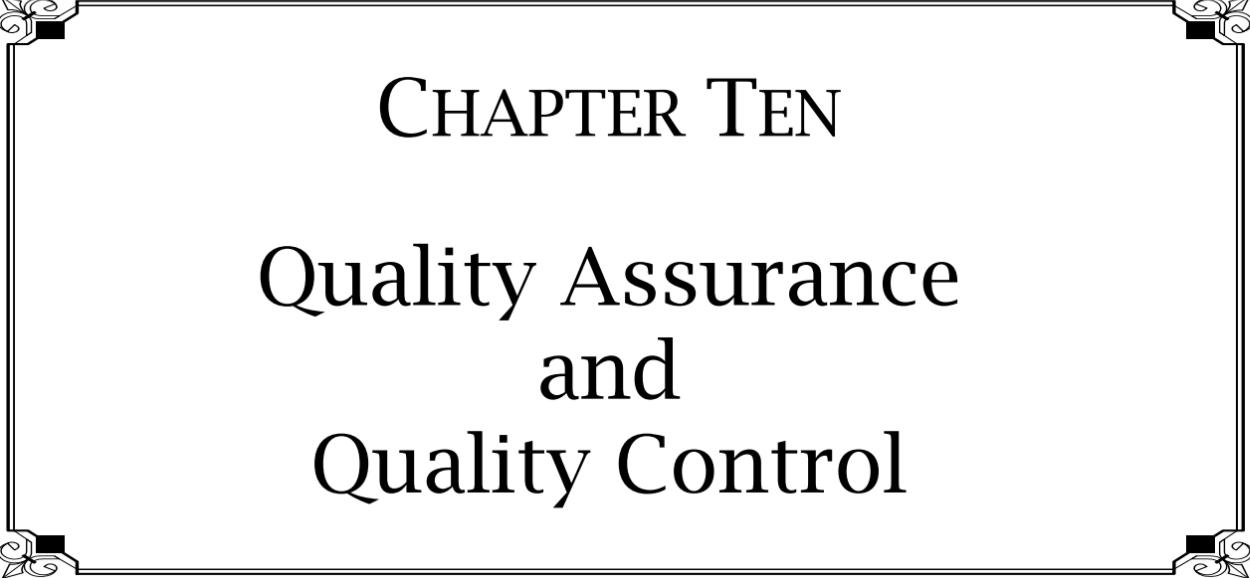
In accordance with Title 23 CFR Section 710.313, a design-build project may be authorized for construction in phases or segments as right of way for an individual property or group of properties are available. A project phase will be authorized under the same conditions of right of way certification as are required for traditional contract projects as described in 1-2.02(b) of this Manual. MaineDOT must have legal possession of all property for the phase of construction and occupants must have vacated.

**9-4.05 Quality Control**

MaineDOT is ultimately responsible for compliance with applicable laws and regulations concerning right of way and for retaining the high level of public trust in the fairness and quality of the acquisition process. The following measures will be taken under MaineDOT's existing quality program to assure owners and occupants are provided the same services, benefits, and protections as they would under traditional contracting process:

1. The Property Office Director will review and approve the right of way acquisition procedures included in design-build Requests for Proposals and contracts. The Director will ensure a qualified Right of Way Manager is designated as right of way liaison to provide timely advice and guidance to the design-build contractor and the right of way subcontractor on right of way law, regulations, and MaineDOT procedures.
2. The MaineDOT Project Quality Control Plan will include oversight reviews, monitoring, and follow up to assure compliance with law, procedures, and contract provisions concerning right of way.

See Chapter 10 of this Manual for more detailed information on MaineDOT's quality control procedures.



CHAPTER TEN

Quality Assurance  
and  
Quality Control

MAINE RIGHT OF WAY MANUAL

*December 2010*

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# CHAPTER TEN

## QUALITY ASSURANCE AND QUALITY CONTROL

### 10-1 PURPOSE AND OBJECTIVES

#### 10-1.01 Purpose

All Property Office personnel, at every level and function, share a responsibility to strive for and maintain a high standard of work quality. Quality is as much a concern to project level professionals, and support staff, as it is to administrators. It is the purpose of this chapter to define a comprehensive and integrated program for incorporating awareness and achievement of quality into the work activities of all right of way staff.

The quality assurance/quality control (QA/QC) process is based on the following concepts:

1. Quality is a responsibility of each individual employee and not solely a management responsibility.
2. Quality is continuous process, not an intermittent concern to address deficiencies that surface. Quality is proactive, not reactive. Quality is a journey, rather than a destination.
3. Quality is specific, not an ambiguous concept. Quality is reflected in criteria and standards of performance and accomplishment.
4. Quality is customer oriented. The right of way process has a diverse set of customers, including property owners, displacees, and the MaineDOT units that use or depend on the completion of right of way services. Thus each right of way function must identify its customers and define quality performance in relation to their needs.

#### 10-1.02 Quality Defined

Quality in right of way is the measurement of the level of work performance of each employee, and the project team as a group as it relates to the Quality Standards and customer satisfaction. High levels of quality result in a project that the Department is proud to deliver and the customer is pleased to receive. Following are the essential elements of right of way work quality:

1. Level of Service. Quality in delivering right of way requires a high level of knowledge of the body of laws, regulations and procedures that control right of way acquisition, and skill in performing specific functions (e.g., appraisal, relocation). The skills, knowledge and abilities of right of way personnel are critical to delivering a high level of service.

2. Timeliness. The right of way process is responsible for delivery of property rights needed for construction and operation of highways. The timely delivery of right of way to meet project schedules is a primary customer need for which Property Office personnel are responsible.
3. Quantity. Right of way, as other functions in MaineDOT, has limited staff resources to carry out its mission. This requires that all employees work diligently and use efficient work practices. Work production levels are valid evaluation factors in unison with applicable difficulty factors. Evaluation will consider complexity and level of difficulty of individual cases and projects, and it is not appropriate to measure individual production solely in terms of units delivered over a time period.

### **10-1.03 Objective**

The objective of this chapter is to establish responsibility and define actions for continuously improving the performance in delivery of right of way services. Tasks to assure quality in each right of way function are set forth. Also, methods of quality control for oversight and improvement of the right of way function as a whole are identified.

### **10-1.04 Responsibilities**

#### **10-1.04(a) Property Office Staff**

Every employee has a responsibility for improving the quality of the process they are responsible to perform, and the timeliness, work quantity and level of service they provide. Following are important factors in carrying out this responsibility:

1. Identify improvement factors within personal control.
2. Contribute to joint efforts to improve quality delivery as a member of a project team, office or other group.
3. Discuss perceived obstacles to quality with management.
4. Accept opportunities to improve knowledge and skills through training, new assignments and accepting team leadership responsibilities.

Every staff member needs a clear understanding of job performance expectations in order to carry out the above responsibilities. This includes a current job description, job performance standards and a yearly evaluation of performance. If any of these elements are not provided, the individual should bring this to the attention of management.

**10-1.04(b) Property Office Management**

The Property Office Management will perform the following actions:

1. Assign responsibilities for coordinating performance of the Quality Control Process; see Section 10-3.
2. Coordinate the Quality Process with related Departmental program functions including Planning, Design, Environment, Legal, Maintenance and Construction.
3. Review and evaluate the Quality Process.
4. As necessary, report to the Director, Project Development Bureau, with recommendations for actions, resources, training, etc., needed to improve quality in right of way procedures.

**10-1.05 Quality Standards**

MaineDOT right of way personnel work under mandated requirements derived from laws, regulations, agency policy, professional standards, Departmental goals and program management. These define mission, goals and basic work standards as described below:

1. Constitutional Requirements. Both the U.S. and Maine State Constitutions require that just compensation and due process of law be provided when private property is acquired for public purposes. These basic Constitutional protections form the foundation of laws and regulations, policies and procedures.
2. Laws. The ***Maine Revised Statutes Annotated (MRSA)*** Title 23, and the ***Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)***, comprise the basic legislated authority that control right of way operations.
3. Regulations. The primary regulatory authority is the ***Code of Federal Regulations***. In particular 23 ***CFR*** 710, which includes highway right of way acquisition & relocation provisions under Title 23 USC; and 49 ***CFR*** 24, which comprises real property acquisition and relocation program requirements for Federal and Federally assisted acquisition.
4. Right of Way Policy. The primary policy and procedure document is the *Right of Way Manual*. Also important are policy interpretations and clarifications issued by memorandum, and policy guidance provided informally by Property Office staff. Together, these items comprise the body of official guidance for performing the right of way function.

5. Position Standards. This includes position descriptions, professional designation criteria and contractor qualifications criteria. These set forth the body of knowledge, skills and abilities that are critical to effective performance of professionals in right of way functions.
6. Project Team Support. A primary responsibility of right of way personnel is to provide ongoing right of way advisory support to the project teams. This support is aimed at resolving unique or complex situations and problems that are not addressed in established policy. Team support also includes coordinating with other Departmental offices, such as the Legal Services Office or the Environmental Office. It also includes communicating with other agencies such as FHWA on issues that involve funding or that cross agency jurisdictions.
7. Program Management. Includes administration of right of way support services, policy, information resources and equipment resources to efficiently carry out the mission of right of way. Program management includes maintaining the system of forms, records, inventories, electronic databases, contracting, personnel evaluation and assignment of support personnel.

The above quality standards support the performance of right of way functions. Quality assurance and control activities may result in modifying the above standards, except laws and regulations, so that they more effectively serve the mission of the right of way function in MaineDOT.

## **10-2 QUALITY CONTROL**

### **10-2.01 Quality Control — General**

Quality control is a process improvement activity that is undertaken at the operational or project level. Each right of way staff member has an individual as well as a shared responsibility to actively contribute to the delivery of quality products by performing tasks appropriate to their assignment and span of organizational influence. The concept of quality control is distinct from quality assurance, which is a program management responsibility described in Section 10-2.02.

The organizational placement of right of way functions within the Department relies on individual initiative and responsibility. Right of way is performed in context of multidisciplinary project teams. Personnel are directed by project team objectives and accomplish these objectives without on-site operational supervision. This structure requires the skills of a highly experienced and motivated professional right of way staff. It enables efficient and on-time delivery of right of way while allowing a high degree of professional independence and decision authority. A major element in success is the self-assessment by operational staff of the quality of the process that they control.

Quality control activities will be undertaken in each right of way function on a continuing basis. The specific activities will vary with each discipline and will be scaled to accommodate the significance of the function in the current program, vulnerability of the function, the staff resources available to carry out quality assessment and the potential efficiencies to be gained. Each Senior Property Officer in the right of way function will be assigned to perform one or more quality control tasks biennially. The tasks, and the form and timing of reporting, will be developed and directed by the Property Office.

### **10-2.02 Quality Control Tasks**

Staff in each right of way discipline will assess the qualitative aspects of operations by performing tasks that are appropriate to the function being examined. The following listings of assessment tasks for each function are examples and not an exclusive list of assessment tasks.

#### **10-2.02(a) Valuation**

Quality control in the valuation function is a process of self-assessing performance and improving methods of producing appraisals and other valuation products. Quality assurance is a shared responsibility of all persons involved in the valuation function, including staff and contract appraisers, review appraisers and support services personnel.

Quality control in the appraisal function may include the following activities and tasks:

1. Develop effective coordination methods with Project Team members responsible for other project development activities.
2. Develop standards for timely assignment of Staff and Consultant Appraisers.

3. Appraisal staff self assess appraisal-related training needs.
4. Valuation staff identify critical path tasks involving appraisals to eliminate barriers to timely completion of these activities.
5. Evaluate performance of consultant appraisers after project assignments are completed concerning quality of documentation, analysis of data and timely delivery of appraisal products.
6. Perform effective evaluation and feedback of work of staff valuation personnel.
7. Review and refine appraisal contract procedures, including maintenance of the Appraiser Register. This includes culling the list periodically for appraisers that are no longer available for assignment.
8. Secure feedback from contract appraisers as to how the process involving them can be more effective and efficient (360-degree evaluation).

Quality control is a focus on achieving improvement in performing the appraisal function using the tools of policy, training, evaluation and communications. MaineDOT's continuing refinement of quality control includes the development of performance standards and evaluation methods to establish goals and measure progress in meeting goals.

#### **10-2.02(b) Waiver Valuation**

Personnel assigned responsibility for Waiver Valuation will actively examine the process to ensure that it is fulfilling its goals as set forth in Chapter 3, and identify opportunities for improvement.

The following items are examples of specific quality control activities that may be undertaken:

1. Conduct follow-up phone interviews with owners after construction is complete.
2. Identify training opportunities that would expand knowledge and skill in right of way acquisition.
3. Suggest refinement in acquisition practices that will make the process more efficient and effective.
4. Participate in informal workshops to exchange experiences and practices with other professionals involved in administrative acquisition.
5. Perform spot checks of closed files to identify successful and unsuccessful practices.

6. Conduct a letter survey of owners after acquisition.

Each involved staff member will develop the quality assurance actions to be undertaken, in consultation with the Senior Property Officer, or as otherwise directed by the Property Office.

#### **10-2.02(c) Acquisition**

Quality control in the acquisition function includes the policy guidance, program management tools and specific training necessary to ensure that responsible personnel are conducting right of way operations in an effective and efficient manner. The various activities used to test and evaluate program activities form the basic elements of the QA function.

Right of way personnel involved in the acquisition function share a responsibility to strive to improve operational quality. This can be advanced by such tasks as:

1. Follow up phone calls with owners after acquisition process is complete. The purpose will be to determine overall satisfaction with the process and secure suggestions that will be useful in future project acquisition activity.
2. Track and analyze completed negotiations records to identify practices that result in successful settlements. Patterns that indicate successful practices can be determined from examination of group of completed cases that may not be apparent in day-to-day work activity.
3. Sharing personal best practices with other staff. Experienced property acquisition staff members bring a wide range of skills, knowledge and techniques to the job that contributes to a higher rate of settlements. The knowledge and successful practices may be shared by such means as workshop sessions or one-on-one mentoring of less experienced acquisition staff.
4. Identify acquisition personnel training needs. Acquisition knowledge and skills are best identified by a formalized process because this is a human focused and subjective area of work. Training opportunities and resources should be prioritized based on objective discovery of employee training needs.

#### **10-2.02(d) Property Management**

The goal of quality control in property management is to secure and protect acquired property, generate income from sale or rental and achieve other objectives stated in Section 7-1.01. Responsibilities for quality control in Property Management include the following:

1. Regularly review policies. Revise as necessary to reflect best property management practices and more effective compliance with applicable law and regulations.

2. Provide advice and guidance to project and field staff that will enhance their knowledge and skill in performing the elements of property management for which they are responsible.
3. Provide specific advice and instruction to field personnel on standards of performance in areas such as building inspection and security, building disposals and property rental.
4. Formal and informal review of property management activities at the District and project level, including work by staff and by private contractors. The purpose of the reviews is to ensure compliance with laws, regulations, policies and professional standards and to identify opportunities to improve performance. The Property Manager under direction of the Legal Services Office and the Property Office will determine the form and frequency of reviews.

#### **10-2.02(e) Relocation**

Quality control in relocation is an inclusive process of evaluating performance and developing ways to continuously improve accomplishment of program goals. This is accomplished by performing spot checks that monitor the function as to the following performance elements.

1. Effective coordination with project team members responsible for other project development activities;
2. Timely and relevant assistance provided to displacees, with special focus on those having needs, including elderly and disabled;
3. Assessment of relocation related needs of relocation personnel;
4. Identification of critical path tasks involving relocation, including prioritizing so that more time is available to those having more serious relocation problems;
5. Evaluation of consultant staff that are employed by the Department to perform relocation services;
6. Participation in process and performance evaluations, including 360-degree evaluations; and
7. Participation in the continuous refinement of relocation practice and policy to reflect best practices in the field of work.

MaineDOT's continuing refining of quality assurance includes development of performance standards and evaluation methods to establish goals and measure progress in meeting goals.

**10-2.02(f) Contracting Right of Way Services**

Quality control includes activities that are incorporated into the contracting process for right of way services to measure progress, monitor progress performance and evaluate the performance of completed work. This includes the following activities:

1. Review and refine Requests for Qualifications (RFQ) and Requests for Proposals (RFP). The initial development of RFQs and RFPs should not be regarded as a final product. Each need for republication of these documents should be occasion for review and revision based on knowledge gained from past experience.
2. Develop more effective means to inform right of way service contractors of MaineDOT policy concerning functions provided under contract and provisions of law that MaineDOT applies specifically to MaineDOT right of way operations.
3. Develop improved ways to attract qualified professionals to submit qualifications and proposals for right of way work contracted by MaineDOT. In particular, develop ways to maximize participation by minorities and women.
4. Perform post project reviews and evaluation of provider's performance under every professional function that is contracted to private sources.

**10-2.02(g) Local Agency Acquisition**

The following activities are appropriate quality control measures that can be undertaken by the municipality performing real property acquisition:

1. Perform a second-party internal review of all documents before they are delivered to the property owner. This includes appraisals, agreements, instruments of conveyance, offer letters, etc.
2. Provide relevant training to agency personnel who are engaged in specialized right of way activity (e.g., appraisal, negotiations, titles, relocation).
3. Perform quality spot checks of completed work concurrent with any ongoing project acquisition activity.
4. Perform peer reviews of work activity when there is more than 1 staff member involved in property acquisition for right of way.
5. Conduct phone or mail surveys of property owners following acquisition.
6. Develop internal procedures or policy to apply to specific recurring situations or circumstances in order to ensure consistency and equitable treatment.

7. Perform joint project reviews between MaineDOT and local agency management staff.

#### **10-2.02(h) Mapping**

The following tasks may be performed by staff to contribute to improving the quality of the MaineDOT mapping function:

1. Develop a peer review process of evaluating mapping work products with the aim of constructively identifying opportunities for improvement.
2. Perform formal evaluations of the quality and timeliness of consultant work products.
3. Perform 360-degree evaluations of specific mapping processes. This would include participation of all parties involved in the process.
4. Survey Departmental and external “customers” as to the effectiveness of specific Mapping and Research policies and practices.

### **10-3 QUALITY ASSURANCE**

#### **10-3.01 Quality Assurance — General**

Quality assurance is the management process that insures conformance of right of way operations to the Department's mission and goals in the most effective manner, and ensures that the right of way process complies with requirements of law, regulations and policy. Quality assurance involves independently evaluating and testing the activities in the right of way process, including the quality control processes. Actions are taken to modify the elements in the process as necessary to better conform to Departmental mission and goals, as well as controlling legal, funding and regulatory authorities.

The MaineDOT concept of quality assurance affirms professionalism of right of way staff. Experienced professionals conduct day-to-day right of way operations within multidisciplinary project teams with minimal direct supervision. This structure allows decisions to be made at the level at which issues arise, in a more timely and responsive manner. The project team approach contrasts to the traditional organizational structure in which there is a vertical chain of supervision, with much decision authority held at an organizational level that is higher than where issues and problems arise.

#### **10-3.02 Risk Assessment**

Risk assessment is the evaluation of relative vulnerability of individual right of way programs and processes. The risk assessment will guide the development of process review activities.

Property Office Staff working with the Senior Property Officers perform a risk assessment for activities under each person's scope of responsibility. Professional and support staff in each unit should be involved either by consultation or direct participation.

Risk vulnerability is a broad scan based on professional judgment and experience of the manager performing the assessment. Each vulnerability factor is rated "low", "moderate" or "high." Explanations or comments on each individual ranking are not appropriate. However, comments summarizing the completed ranking and pointing out elements of high or low vulnerability should be provided.

The first step is to identify the vulnerability factors applicable to the function. Vulnerability factors may include such items as public exposure, impact on citizens or responsibility for public funds, or degree of independence from legal or regulatory controls. Identification of risk factors may be a one-time activity. However factors may be refined or modified to accommodate changes over time in unit responsibilities or the evolution of the function.

The second step in risk assessment is to rank every element in the function on a relative vulnerability scale, from low to high vulnerability. This will require subjective reasoning but will provide a relative degree and relative priority of risk within each unit.

The Property Office will perform the risk assessment for the right of way function as a whole from reports of Senior Property Officers, as well as consultation with managers and “customers” of the process. This assessment will conclude in the identification of functions, programs, processes or projects that will be subject to process reviews.

### **10-3.03 Process Reviews**

The process review is an in depth review of the need, opportunity and methods for improving performance and service in program areas identified as high priority in the risk assessment process. The topic of study should be narrowly defined so that the review can be performed with available staff.

The process reviews will be varied in their scope, methods and format. The depth and scope of the reviews, while as detailed as practical, will be scaled to available staff resources and the characteristics of the activity under review. The reviews may be performed with participation of persons outside of right of way personnel to gain perspective and expertise. For instance, the Property Office may invite participation of civil rights or contracting division staff in a review of right of way contracting.

Following are several process review activities that may be performed:

1. Project Reviews. A recently completed single right of way project might be reviewed comprehensively with spot checks of appraisals, negotiations relocation, etc. The review might include participation by staff from other project teams, or be performed as a peer review.
2. Joint MaineDOT – FHWA Team Reviews. The MaineDOT – FHWA Partnering Agreement for Shared Oversight of Federal-Aid Projects provides a good structure for joint involvement and responsibility for quality control reviews. The oversight by direct involvement concept can be expressed through joint development of a process review plan or by joint involvement in executing reviews or by shared development of strategies for improving reviewed components of the right of way process.
3. Peer Consultations. Professionals in any field tend to respect each other’s knowledge and experience, learn from each other, readily share helpful concepts and accept constructive advice for improvement. The Peer Consultation concept provides a structure for this to occur. Experienced staff is assigned to observe and consult with counterparts in other locations for a brief time (several days). It is important that this take place in a non-judgmental environment. A very general report will be made to the Property Office Director, with the primary value in peer discussions of best practices and experience sharing.
4. Temporary Job Exchange. Experienced persons in distinct but related jobs may trade positions for a period of time. For example, an experienced appraiser and

review appraiser might occupy each other's positions for a 6-month period. They would then formally report to each other and to the Property Office on the experience. Or, an appraiser could perform as relocation agent or negotiator. This may result in fresh insights and approaches to accomplishing jobs. Participants can gain a broader perspective on their job by having "walked in the other persons shoes" for a time. Personnel are cross-trained to other positions. Involved people become more aware of the effectiveness of their actions when they know that others will be working "their territory."

5. Right of Way Customer Surveys. Property owners and occupants of property acquired by MaineDOT comprise a set of customers that the Department is committed to provide quality services and benefits. A well-designed customer mail survey after the final official transaction with MaineDOT can provide feedback that will guide improvement in services on future projects.
6. Function Reviews. This is an in-depth examination of specific functions (e.g., appraisal, administrative settlements). It would include an in-depth review of work product (e.g., files, records, reports) evaluations, owner interviews and review of quality assurance products relating to the function. The objective would be to identify need and methods of achieving improvement in the operation of the function reviewed.

#### **10-3.04 Evaluation**

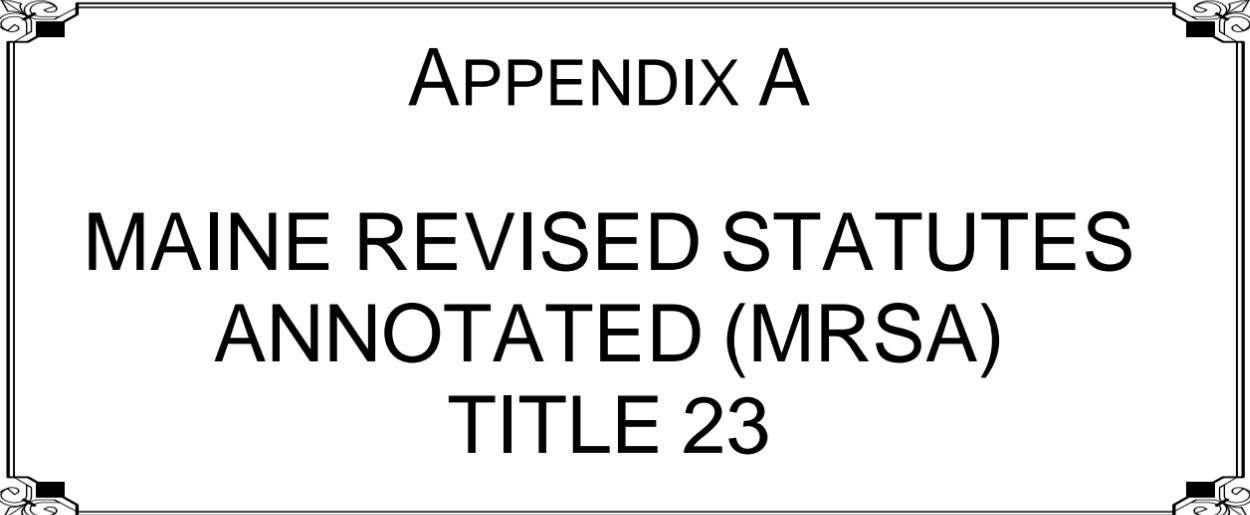
At the end of the biennial cycle of process review activities, the quality subcommittee or other party assigned quality control responsibility will summarize the findings and recommendation in a report to the Property Office. The report will recommend any changes that are supported by the quality control activities. A copy of any formal report generated will be provided to the FHWA Division Office. The recommendations may address the following:

1. Changes needed in right of way policy,
2. Training needs of personnel,
3. Staffing needs,
4. Equipment resources needed to perform right of way functions,
5. Right of way workload changes,
6. Coordination with other departmental functions,
7. Project team participation,
8. Coordination with local agencies,
9. Oversight of contracted services, and
10. Service to property owners.

**10-3.05 Implementation of Quality Improvements**

The Property Office will report to the Director, Project Development Bureau, with any specific actions to improve quality in right of way. The Property Office Director will determine the appropriate form and content of the reporting. In certain cases it may include as a minimum a summary of the quality control activities including the risk assessment, process review and evaluation phases.. A copy of any formal report generated will be provided to the FHWA Division Office

Any implementation may require addressing the need for resources, policy revisions or organizational changes that require approval or participation outside of the right of way function.



APPENDIX A

MAINE REVISED STATUTES  
ANNOTATED (MRSA)  
TITLE 23

MAINE RIGHT OF WAY MANUAL

*December 2010*



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**TITLE 23, SECTION 61; VACATION, SALE OR LEASE OF ACQUIRED LAND**

- 1. Land acquired may be vacated.** The Department of Transportation may vacate any land or part of land or rights in land which have been taken or acquired for transportation purposes by executing and recording a deed, and that action shall vest the title to the lands or rights so vacated in the person in whom it was vested at the time of the taking, their heirs and assigns. The value at the time of vacation may be pleaded in mitigation of damages in any proceeding on account of that taking. [1985, c. 13 (new).]
- 2. Land acquired may be sold.** The Governor, on recommendation of the department, may sell and convey on behalf of the State the interests of the State in property taken or acquired by purchase for transportation purposes and deemed no longer necessary for those purposes. [1985, c. 13 (new).]
- 2-A. Easements may be conveyed.** The Department of Transportation may grant or otherwise transfer easements over property taken or acquired for transportation purposes when the department in its sole discretion determines that the conveyance of such easements is appropriate and necessary. [1999, c. 753, §1 (new).]
- 3. Lease and use of property.** The department may make advantageous use of property acquired or taken pending that use for transportation purposes, including, but not limited to, the leasing of those interests. All such property and interests shall be deemed to be for transportation purposes and shall be exempt from taxation. [1985, c. 13 (new).]
- 4. Proceeds from sale, lease or vacating.** The State's share of all gross proceeds from a sale, lease or vacating of property shall be deposited into the Highway Fund and shall only be expended upon allocation by the Legislature. The Federal Government's share shall be deposited in the account from which it originated. [1987, c. 735, §39 (rpr).]

**TITLE 23, SECTION 63; RECORDS OF RIGHT-OF-WAY DIVISION CONFIDENTIAL**

The records and correspondence of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority relating to negotiations for and appraisals of property, pending the final settlement for all claims on the project to which they relate, and the records and data of the department and the Maine Turnpike Authority relating to engineering estimates of costs on projects to be put out to bid are confidential and may not be open for public inspection. The records and correspondence of the right-of-way divisions relating to negotiations for and appraisals of property must be open for public inspection after 9 months following the completion date of the project according to the record of the department or authority. Records of claims that have been appealed to the Superior Court must be open for public inspection following the award of the court. [2001, c. 158, §1 (rpr).]

**TITLE 23, SECTION 73; SENSIBLE TRANSPORTATION POLICIES ACT****§73. Transportation policy**

1. **Short title.** This section may be known and cited as the "Sensible Transportation Policy Act." [IB 1991, c. 1, §1 (new).]

2. **Purposes and findings.** The people of the State find that decisions regarding the State's transportation network are vital to the well-being of Maine citizens, to the economic health of the State and to the quality of life that the citizens treasure and seek to protect.

The people also find that these decisions have profound, long-lasting and sometimes detrimental impacts on the natural resources of the State, including its air quality, land and water.

The people further find that substantial portions of the state highway system are in disrepair and improvements to the State's roads and bridges are necessary to provide a safe, efficient, and adequate transportation network throughout the State.

The people further find that the State's transportation network is heavily dependent on foreign oil, that such reliance is detrimental to the health of the State's economy and that the health and long-term stability of the State's economy require increased reliance on more efficient forms of transportation.

The people further find that improvements to the transportation network are necessary to meet the diverse transportation needs of the people of the State including rural and urban populations and the unique mobility requirements of the elderly and disabled.

The people further find that the decisions of state agencies regarding transportation needs and facilities are often made in isolation, without sufficient comprehensive planning and opportunity for meaningful public input and guidance.

[IB 1991, c. 1, §1 (new).]

3. **Transportation policy.** It is the policy of the State that transportation planning decisions, capital investment decisions and project decisions must:

- A. Minimize the harmful effects of transportation on public health and on air and water quality, land use and other natural resources; [RR 1991, c. 2, §88 (cor).]
- B. Require that the full range of reasonable transportation alternatives be evaluated for all significant highway construction or reconstruction projects and give preference to transportation system management options, demand management strategies, improvements to the existing system, and other transportation modes before increasing highway capacity through road building activities; [RR 1991, c. 2, §88 (cor).]
- C. Ensure the repair and necessary improvement of roads and bridges throughout the State to provide a safe, efficient and adequate transportation network; [RR 1991, c. 2, §88 (cor).]

- D. Reduce the State's reliance on foreign oil and promote reliance on energy-efficient forms of transportation; [RR 1991, c. 2, §88 (cor).]
  - E. Meet the diverse transportation needs of the people of the State, including rural and urban populations and the unique mobility needs of the elderly and disabled; [RR 1991, c. 2, §88 (cor).]
  - F. Be consistent with the purposes, goals and policies of the Comprehensive Planning and Land Use Regulation Act; and [RR 1991, c. 2, §88 (cor).]
  - G. Incorporate a public participation process in which local governmental bodies and the public have timely notice and opportunity to identify and comment on concerns related to transportation planning decisions, capital investment decisions and project decisions. The department and the Maine Turnpike Authority shall take the comments and concerns of local citizens into account and must be responsive to them. [RR 1991, c. 2, §88 (cor).] [RR 1991, c. 2, §88 (cor).]
4. **Rulemaking.** The Department of Transportation shall adopt a rule within one year of the effective date of this Act, in coordination with the Maine Turnpike Authority and state agencies including the Department of Economic and Community Development, the State Planning Office and the Department of Environmental Protection, to implement the statewide comprehensive transportation policy. The rule must incorporate a public participation process that provides municipalities and other political subdivisions of the State and members of the public notice and opportunity to comment on transportation planning decisions, capital investment decisions, project decisions and compliance with the statewide transportation policy. [IB 1991, c. 1, §1 (new).]
5. **Applicability to Department of Transportation.** Transportation planning decisions, capital investment decisions and project decisions of the Department of Transportation are governed by and must comply with the transportation policy set forth in this section and rules implementing that policy. [IB 1991, c. 1, §1 (new).]

**TITLE 23, SECTIONS 151 – 161; STATE CLAIMS COMMISSION****§151. Purposes.**

The purposes of this subchapter are to establish an independent, impartial board composed of persons well learned in the elements that may be properly considered in the determination of fair market value of property taken in condemnation proceedings; to empower such board to make awards of just compensation in highway condemnations and to establish before such board a procedure designed to afford to any interested party an opportunity to appear, present his case and have his rights fully protected without the necessity for retaining professional assistance; to thus provide to any interested party a prompt, efficient and inexpensive method of determination of just compensation and prompt payment of all or part of such compensation without prejudice to any right of appeal allowed.

**§152. Composition; appointment; powers**

The State Claims Commission, established by Title 5, section 12004-B, subsection 5, consists of 5 members. Four of the members must be appointed by the Governor, 2 of whom must be qualified appraisers certified as general real estate appraisers pursuant to Title 32, chapter 124 and 2 of whom must be attorneys-at-law. The Governor shall designate one of the attorneys-at-law to be chair. The members of the commission appointed by the Governor shall serve for terms of 4 years. They must be sworn, and for inefficiency, willful neglect of duty or for malfeasance in office may, after notice and hearing, be removed by the Governor on the address of both branches of the Legislature or by impeachment. In case of a vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of the member whose place that successor takes, subject to removal as provided in this section. [1999, c. 185, §2 (amd).]

Members of the State Claims Commission must be compensated according to the provisions of Title 5, chapter 379. The daily rate for commission members is \$150. [1995, c. 438, §2 (amd).]

In carrying out its duties, the commission shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. It shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant and unduly repetitious testimony. A majority of the commission, being present, may determine all matters, but the chairman shall resolve all questions of admissibility. [1987, c. 395, Pt. A, § 92 (rpr).]

The commission shall have authority to make rules and prescribe forms to secure a speedy, efficient and inexpensive disposition of all proceedings. Each member of the commission, for its official purposes, may administer oaths, certify to official acts and issue all process necessary to the performance of the duties of the commission. A reporter shall record hearings when required by the commission. [1987, c. 395, Pt. A, § 92 (rpr).]

The commission must maintain an office in Kennebec County. The Commissioner of Administrative and Financial Services shall appoint, subject to the Civil Service Law, a clerk of the commission to keep its records and to perform such other duties as the commission prescribes. The clerk has authority to certify to all official acts of the commission, administer oaths, issue subpoenas, and

issue all processes, notices, orders or other documents necessary to the performance of the duties of the commission. [1991, c. 780, Pt. Y, §119 (amd).]

The Commissioner of Administrative and Financial Services shall appoint and fix the compensation of a reporter to the commission, and shall review and approve all charges made by such reporter for transcripts of the record of hearings before the commission. The commissioner may appoint, subject to the Civil Service Law, such clerical assistants for the commissioner as the commissioner considers necessary. [1991, c. 780, Pt. Y, §120 (amd).]

The 5th member of the commission shall be appointed for each hearing or series of hearings within the county where the land taken lies. He shall be a member of the board of county commissioners of the county wherein the land taken is situated and shall be appointed by the chairman of the State Claims Commission upon recommendation which shall be made, upon request, by the board of county commissioners of that particular county. In the event that any board of county commissioners should fail to make the required recommendation, then the chairman of the State Claims Commission may appoint a member of such board to serve. He shall be sworn by the chairman of the State Claims Commission and shall serve as a member of that commission only for the particular hearing or hearings for which he is appointed. He shall participate fully in such hearings and the awards made as a result thereof. Each such member shall be paid at the same per diem rate as that fixed for other members of the commission. Any member of the board of county commissioners thus designated shall serve only for the particular hearing or hearings set forth in his appointment and such service shall be as a member of the State Claims Commission and not in his capacity as a member of the board of county commissioners. [1987, c. 395, Pt. A, § 92 (rpr).]

### **§153. Property for highways (REPEALED)**

### **§154. Condemnation proceedings**

If the department determines that public exigency requires the taking of property or any interest in property, or is unable to purchase a property or any interest in a property, or the necessary ways and access to a property at what it considers a reasonable valuation, or if the title in a property is defective, it shall file in the registry of deeds for the county or registry district where the land is located a notice of condemnation which must contain a description of the project specifying the property and the interest taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The department may prescribe procedures for the reasonable determination of the owner or owners of record. The department may join in the notice one or more separate properties whether in the same or different ownership and whether or not taken for the same use. [1997, c. 272, §2 (amd).]

The department shall serve a check in the amount of the determined net damage and offering price and a copy of the notice of condemnation on the owner or owners of record. In case there is multiple ownership, the check may be served on any one of the owners. With that copy the department must serve on each individual owner of record a copy of that part of the plan as relates to the particular parcel or parcels of land taken from that owner and a statement by the department with respect to the particular parcel or parcels of land taken from that owner which must: [1997, c. 272, §2 (amd).]

1. **Date of proposed possession.** State the proposed date of taking possession; [1981, c. 470, Pt. A, § 125 (amd).]
2. **Compensation involving severance damage.** Where the department appraisals disclose severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:
  - A. The highest and best use of the property at the date of taking;
  - B. The highest and best use of the property remaining after the taking;
  - C. The fair market value of the property before the taking;
  - D. The fair market value of the property after the taking;
  - E. The gross damage, showing separately:
    - (1) The fair market value of the real property taken; and
    - (2) Severance damages including the impairment or destruction of facilities and structures; [1981, c. 470, Pt. A, § 126 (amd).]
  - F. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against severance damages; [1975, c. 431, § 4 (amd).]
  - G. The net damage showing separately:
    - (1) The fair market value of the real property taken;
    - (2) The amount of severance damages in excess of special benefits; and
    - (3) The offering price; [1997, c. 272, §2 (amd).]
  - H. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within said 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and [1987, c. 395, Pt. A, § 94 (amd).]  
  
Enclosed Check No.: ..... Amount: \$ .....  
Payable to: .....  
Sent to: .....  
  
[1997, c. 272, §2 (amd).]
3. **Compensation not involving severance damage.** Where the department appraisals disclose no severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:
  - A. The highest and best use of the property at the date of taking;
  - B. [1975, c. 431, § 6 (rp).]

- C. The fair market value of the real property taken as of the date of taking; [1975, c. 431, § 7 (amd).]
  - D. [1975, c. 431, § 8 (rp).]
  - E. Offering price; [1975, c. 431, § 9 (rpr).]
  - F. The check represents the State's offer of just compensation. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within the 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and [1997, c. 272, §2 (amd).]
  - G. Enclosed Check No.: ..... Amount: \$ .....  
Payable to:  
Sent to:  
[1997, c. 272, §2 (amd).]
4. **Compensation in cases involving the facilities of a public utility.** Where the condemnation involves the taking of established rights and facilities owned by a public utility and located outside of an established highway right-of-way, no statement by the department as provided above may be sent to the public utility concerned. In any negotiations for an agreement with such public utility with regard to such rights and facilities, the department shall consider, without being limited to, the following elements of damage:
- A. Relocation costs, which must include the cost of acquisition of substitute rights and the cost of establishing either existing or substitute facilities in a new location; [1997, c. 272, §2 (amd).]
  - B. The salvage value of facilities removed.
  - C. Cost of removal; and [1981, c. 470, Pt. A, § 129 (amd).]
  - D. The value of betterments where the function of the substitute facilities exceeds the function of the replaced facilities. [1981, c. 470, Pt. A, § 129 (amd).] [1997, c. 272, §2 (amd).]

Service of the notice of condemnation with a copy of the plan, check and the statement by the department must be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. A notice describing the condemnation must be published once in a newspaper of general circulation in the county where the property is located and such publication constitutes service on any unknown owner or owners or other persons who may have or claim an interest in the property. The notice must consist of an area map depicting the general location of the property interests to be condemned and such other information as the department determines will sufficiently identify the area in which the property interests are to be

taken; an informative summary listing the parcel or item numbers to be condemned, the name of the apparent owner or owners of record of the property interests, the estimated areas to be condemned and the nature of the interests to be condemned; and a location at which the complete notice of layout and taking may be examined. [1997, c. 272, §2 (amd).]

If such owner is a person under the age of 18 years, or an incompetent person, the commission shall cause such notice and check to be served upon the legal guardian of such person or incompetent. If there is no such guardian, then the department shall apply to the judge of probate for the county wherein the property is situated, briefly stating the facts and requesting the appointment of a guardian. The reasonable fee of such guardian as approved by the court must be paid by the department. [1997, c. 272, §2 (amd).]

In case there is a mortgage, tax lien of record or other encumbrance covering any of said land, a copy of the notice of condemnation must be sent forthwith by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to the holder's office or place of abode if known, otherwise to the office, abode or address as set forth in said record. [1997, c. 272, §2 (amd).]

The recording of the notice of condemnation is the date of taking and vests title to the property therein described in the State in fee simple or such lesser state as is specified in the notice of condemnation. Within one year after the completion of the project for which the land is taken, the department shall file a plan for recording in the registry of deeds for the county or registry district where the land is located. [1997, c. 272, §2 (amd).]

If a condemnation proceeding is instituted and then abandoned, the owner of any right, title or interest in any real property included in said proceeding must be reimbursed by the department for reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings. [1997, c. 272, §2 (amd).]

### **§155. Negotiation**

The department shall have 60 days from the date of taking within which to negotiate with the owner or owners of record for an agreement as to the amount of just compensation. If within that time the owner rejects the State's offer of just compensation, such owner may apply to the department and have the matter referred to the State Claims Commission for assessment of the damage. If, at the expiration of that time, no such agreement for just compensation has been made, the department shall immediately file a petition with the State Claims Commission setting forth the pertinent facts including the names and addresses of the owner or owners of record and the holders of any mortgages, tax liens or other encumbrances, a copy of the notice of condemnation, the statement of the department and a plan of the property involved as served upon the owner or owners of record in accordance with section 154 and requesting a hearing and an award of just compensation. [1987, c. 395, Pt. A, § 97 (amd).]

### **§156. Hearing before board**

The State Claims Commission shall immediately enter the petition of the department upon its docket and assign a date for hearing at the earliest possible date. The chairman of the board shall

assign no more than 3 members of the board for hearings, one of whom shall be an appraiser and one an attorney at law. Notice of the time and place for the hearing shall be mailed by registered or certified mail to the department and to the owner or owners of record and to the holders of any mortgage, tax lien or any other encumbrance on the property involved at least 14 days before the date of the hearing. In the event the notice required is returned to the State Claims Commission marked "refused" or "unclaimed" by the United States post office, the State Claims Commission may, at its option, reschedule the hearing by giving the notice required in this paragraph, or it may cause the matter to be heard on the day originally scheduled by causing service to be made upon the party not served by certified or registered mail in a manner allowed for service of a summons on a complaint in the Superior Court, which notice shall be served at least 5 days before the originally scheduled hearing. The hearing shall be held in quarters suitable for a full presentation of all evidence and located as conveniently as possible for all interested parties in the county where the land is situated. Before making an award, the State Claims Commission shall view the property involved with or without the presence of the interested parties, but it shall first notify the interested parties of the time when it will view the property. The department shall be represented at the hearing and may present in open hearing evidence as to title, engineering maps and data, and its opinion, evidence and appraisal or appraisals as to the fair market value of the property involved before and after the taking. In all matters where a verbatim record of the proceedings is made by an official board reporter, a transcript of the same shall be furnished to the interested parties, upon request, and upon payment of a reasonable charge for transcribing and preparing such record. In making its award, the State Claims Commission shall not be limited by the range of testimony produced before it but may reach its decision on the basis of the view, the testimony and its own judgment. The State Claims Commission may continue a hearing from time to time for cause shown or by agreement of parties; and where such continuance is made at the request of the landowner, may require that interest be waived for the period of the continuance. [1987, c. 395, Pt. A, § 98 (amd).]

As promptly as possible after the conclusion of the hearing, the State Claims Commission shall make an award in writing specifying: [1987, c. 395, Pt. A, § 98 (amd).]

1. **Owners and encumbrances.** The owner or owners of record and the holder of any mortgage, tax lien or other encumbrance of record; [1965, c. 297, § 6 (amd).]
2. **Nature of interest taken.** The nature of the interest taken;
3. **Commission's decision on elements of damage.** The State Claims Commission's decision as to each of the elements of damage listed in section 154, subsection 2 or 3, or the elements of damage as set forth in section 154, subsection 4, and such other elements of damage as are legally compensable; [1987, c. 395, Pt. A, § 98 (amd).]
4. **Gross damage.** The gross damage which shall be the net damage not including interest; [1965, c. 297, § 7 (rpr).]
5. **Net amount of award.** The net amount of the award which shall be the net damage less the amount paid the owner or owners at the date of taking; [1965, c. 297, § 8 (new).]

6. **Interest on award.** The interest, if any, due on the net amount of the award from the date of taking to the date of the award; [1965, c. 297, § 8 (new).]
7. **Award.** The award which shall be the net damage, less the amount paid the owner or owners at the date of taking plus interest on the net amount of the award; and [1981, c. 470, Pt. A, § 130 (amd).]
8. **Withholding.** The withholding, if any, authorized pursuant to section 244-A, subsection 4. [1973, c. 22, § 1 (new).]

No interest may be allowed on so much of the net damage that has been paid to the owner or owners. [1991, c. 684, §2 (rpr).]

An attested copy of each award must be sent immediately to the Department of Transportation and to the party or parties named in the award. The State Claims Commission shall state by letter the date it forwarded the award and all parties shall within 30 days designate to the commission the award or awards from which an appeal will be taken to Superior Court. If no appeal is taken within 30 days of the date of issuance of the commission award, the State Claims Commission shall promptly notify the Department of Transportation. The Department of Transportation shall, within 60 days from the date of issuance of the commission award, pay the awarded amount to the party or parties named in the award. [1991, c. 684, §2 (rpr).]

Service as required by this section must be made in the manner prescribed by Rule 5 of the Maine Rules of Civil Procedure. [1991, c. 684, §3 (rpr).]

Upon certification by the Department of Transportation that after due diligence the address of owners of record can not be determined or when the State Claims Commission notice by mail is returned to the commission unclaimed or unknown or where personal service can not be made, the chair of the commission may order service by publication. Notice of the time and place of the review and hearing must be published once in a newspaper of general circulation in the county in which the subject property is located. The commission shall then proceed with the hearing as in other cases and the appeal provisions must be available to the Department of Transportation and the record owner or owners, or any one of them, who appears and makes application for appeal pursuant to section 157. [1991, c. 684, §4 (amd).]

The chair of the State Claims Commission may appoint a guardian ad litem to protect the interest and rights of any minor or incompetent persons notified under this section and determine and set reasonable compensation for that guardian ad litem. This compensation must be paid by the Department of Transportation. [1991, c. 684, §5 (new).]

After the appeal period from the decree of the State Claims Commission or a judgment of any court has expired, any sum of money directed by a decree of the commission or by a judgment of any court to be paid over that remains unclaimed for 60 days must be disposed of consistent with Title 33, chapter 41. [1997, c. 508, Pt. A, §3 (aff); Pt. B, §5 (amd).]

Notwithstanding Title 1, section 302, this section applies to all actions and proceedings pending on September 14, 1979. [1991, c. 684, §7 (amd).]

**§157. Appeals**

The Department of Transportation or any party or parties aggrieved by an award by the State Claims Commission may appeal to the Superior Court in the county where the land is situated within 30 days from the date the award was forwarded by the commission. This appeal is de novo and is taken by filing a complaint setting forth substantially the facts upon which the case will be tried like other civil cases. [1991, c. 684, §8 (rpr).]

The court shall determine the same by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto; except that if the department appeals and if the department does not prevail, interest where such is due and costs shall be paid by the department and the owner or owners shall be reimbursed by the department for a reasonable attorney's fee. [1971, c. 593, § 22 (amd).]

If either the owner or owners of record or the department appeal and the just compensation finally awarded, exclusive of interest, is less than the gross damage determined by the State Claims Commission, exclusive of any interest allowed, then the court shall give judgment in favor of the department for the excess of the gross damage determined by the State Claims Commission, inclusive of interest, over the final award and for its costs from the time of appeal. Execution may be issued on such judgment. [1987, c. 395, Pt. A, § 99 (amd).]

If either the owner or owners of record or the department appeal and the just compensation finally awarded, exclusive of interest, is not less than the gross damage determined by the State Claims Commission, exclusive of any interest allowed, then the court shall give judgment to the owner or owners for the amount in which the final award is in excess of the amount paid the owner or owners and for interest on such excess from the date of taking and for costs from the time of appeal. The clerk shall certify the final judgment of the court to the department, which shall enter the same of record and order the same to be paid by the Treasurer of State. The judgment and certificate of judgment shall specify the withholding, if any, authorized pursuant to section 244-A, subsection 4. [1991, c. 684, §9 (amd).]

In case of the decease of any person entitled to claim damages under this subchapter, the heirs, executors, administrators or assigns of such person shall have the right to prosecute the appeal provided for in this section under the same conditions and limitations as the original owner had, and may be substituted for the appellant in any proceedings commenced by said appellant. In case any landowner assigns, transfers or sells his right to claim damages, his assignee, transferee or vendee shall have the same rights as above set forth.

**§158. Withdrawal of money deposited (REPEALED)****§159. Interpleader**

If difficult questions of law should arise before the State Claims Commission as to entitlement to or apportionment of just compensation, then it is authorized to make a blanket award to all parties interested. If no appeal is taken and no agreement is reached by the parties named in the award within 60 days from the date of such award, the State Claims Commission shall certify the facts and

legal questions to the department. The department shall then interplead the parties named in the award by a complaint filed in the Superior Court in the county wherein the land is situated and shall pay in the amount of the award to the clerk of courts of the county to be paid in accordance with the court's order. For purposes of this section, the department shall be acting to prevent double or multiple liability. [1989, c. 502, Pt. A, §88 (amd).]

### **§160. Property management**

Any property taken or acquired for highway purposes may be leased, let or rented by the department to a displaced person pending advantageous use for highway purposes. The department may renovate and maintain property pending such advantageous use. The proceeds from leasing, letting or renting such property shall be credited to the fund from which payment was made for the acquisition. The consideration paid by the tenant for occupancy shall not exceed the fair rental value of the property based on short-term occupation. [1971, c. 593, § 22 (amd).]

### **§161. Incidental expense payments**

1. **Reimbursement.** The department, as soon as practicable after the date of payment of just compensation, shall reimburse the owner from whom land or rights in land were acquired for highway purposes, to the extent the department deems fair and reasonable, for expenses such owner necessarily incurred for:
  - A. Recording fees, transfer taxes and similar expenses, if any, incidental to conveying such property to the State; [1971, c. 333, § 5 (new).]
  - B. Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and [1971, c. 333, § 5 (new).]
  - C. The pro rata portion of real property taxes paid which are allowable to a period subsequent to the date of vesting title in the State, or the effective date of possession of such real property by the State, whichever is earlier. [1971, c. 333, § 5 (new).] [1971, c. 593, § 22 (amd).]
2. **Determination.** Any determination by the department in the administration of this section shall be final and nothing herein shall be construed to give any person a cause of action in the State Claims Commission or the Superior Court. [1987, c. 395, Pt. A, § 102 (amd).]

**TITLE 23, SECTIONS 241 – 247; RELOCATION ASSISTANCE****§241. Purpose**

The prompt and equitable relocation and reestablishment of persons, businesses, farm operations and nonprofit organizations displaced as a result of state or state aid highway projects are necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Relocation payments and advisory assistance are to be made available to all persons so displaced in accordance with this subchapter. [1981, c. 470, Pt. A, § 133 (amd).]

**§242. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §158 (amd).]

1. **Average annual net earnings.** [1989, c. 208, §§4, 21 (rp).]
2. **Business.** "Business" shall mean any lawful activity, excepting a farm operation conducted primarily:
  - A. For the purchase, sale, lease and rental of personal and real property and for the manufacture, processing or marketing of products, commodities or any other personal property; [1971, c. 333, §1 (new).]
  - B. For the sale of services to the public; or [1971, c. 333, §1 (new).]
  - C. By a nonprofit organization; or [1971, c. 333, §1 (new).]
  - D. Solely for the purposes of section 244, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. [1971, c. 333, §1 (new).] [1971, c. 333, §1 (new).]
- 2-A. **Comparable replacement dwelling.** "Comparable replacement dwelling" means any dwelling that is:
  - A. Decent, safe and sanitary; [1989, c. 208, §§5, 21 (new).]
  - B. Adequate in size to accommodate the occupants; [1989, c. 208, §§5, 21 (new).]
  - C. Within the financial means of the displaced person; [1989, c. 208, §§5, 21 (new).]
  - D. Functionally equivalent to the displacement dwelling; [1989, c. 208, §§5, 21 (new).]

- E. In an area not subject to unreasonably adverse environmental conditions; and [1989, c. 208, §§5, 21 (new).]
  - F. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment. [1989, c. 208, §§5, 21 (new).] [1989, c. 208, §§5, 21 (new).]
- 2-B. Department.** "Department" means the Department of Transportation. [1989, c. 208, §§5, 21 (new).]
- 3. Displaced person.** "Displaced person" is defined as follows.
- A. "Displaced person" means:
    - (1) Any person who moves from real property or moves that person's personal property from real property:
      - (a) As a direct result of a written notice of intent to acquire or the acquisition of that real property in whole or in part for a program or project undertaken by the department; or
      - (b) On which the person is a residential tenant or conducts a small business, a farm operation or a business defined in subsection 2, as a direct result of rehabilitation, demolition or such other displacing activity as the department prescribes under a program or project undertaken by the department in any case in which the department determines that the displacement is permanent; and
    - (2) Solely for the purposes of section 243 and section 244, subsections 1 and 2, any person who moves from real property or moves that person's personal property from real property:
      - (a) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by the department; or
      - (b) As a direct result of rehabilitation, demolition or such other displacing activity as the department prescribes of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by the department where the department determines that the displacement is permanent. [1989, c. 208, §§6, 21 (new).]
  - B. "Displaced person" does not include:

- (1) A person who has been determined, according to criteria established by the department, either to be unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this subchapter; and
- (2) In any case in which the department acquires property for a program or project, any person, other than a person who was an occupant of the property at the time it was acquired, who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project. [

1989, c. 208, §§6, 21 (new).] [1989, c. 208, §§6, 21 (rpr).]

4. **Existing patronage.** "Existing patronage" means either the volume of clientele or the annual net earnings for the 2 taxable years immediately prior to the taxable year in which the business was displaced. [1989, c. 208, §§7, 21 (rpr).]
5. **Farm operation.** "Farm operation" shall mean any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support. [1971, c. 333, §1 (new).]
6. **Federal agency.** "Federal agency" shall mean any department, agency or instrumentality in the executive branch of the Federal Government, except the National Capitol Housing Authority, any wholly-owned government corporation, except the District of Columbia Redevelopment Land Agency, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof. [1971, c. 333, §1 (new).]
7. **Mortgage.** "Mortgage" shall mean such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this State, together with the credit instruments, if any, secured thereby. [1971, c. 333, §1 (new).]
8. **Person.** "Person" shall mean any individual, partnership, corporation or association. [1971, c. 333, §1 (new).]
9. **Program or project.** "Program or project" means any highway construction or related activity undertaken by the Department of Transportation on a state or state-aid highway and any other activity undertaken and authorized by law to be carried out by the department. [1989, c. 208, §§8, 21 (amd).]
- 9-A. **Small business.** "Small business" means any business having fewer than 500 employees working at the site being acquired or permanently displaced by a program or project. [1989, c. 208, §§9, 21 (new); c. 866, Pt. B, §1 (amd); §26 (aff).]
10. **State agency.** "State agency" means any department, agency or instrumentality of this State or any political subdivision of this State, any department, agency or instrumentality of

2 or more states, or 2 more political subdivisions of the State or states and any person who has the authority to acquire property by eminent domain under state law. [1989, c. 208, §§10, 21 (amd).]

#### **§243. Relocation assistance advisory services**

- 1. Relocation assistance advisory program.** Whenever the acquisition of real property for a department program or project will result in the displacement of any person, the department shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection 2. If the department determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the department may offer the person relocation advisory services under the program. [1989, c. 208, §§11, 21 (amd).]
- 2. Program to include.** Each relocation assistance advisory program required by subsection 1 shall include such measures, facilities or services as may be necessary or appropriate in order to:

  - A. Determine and make timely recommendations on the needs and preferences, if any, of displaced persons, for relocation assistance; [1989, c. 208, §§11, 21 (amd).]
  - B. Provide current and continuing information on the availability, sales prices and rental charges of comparable replacement dwellings for displaced homeowners and tenants, and of comparable commercial properties and on suitable locations for displaced businesses and farm operations; [1989, c. 208, §§11, 21 (amd).]
  - C. Assure that, within a reasonable period of time, prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe and sanitary dwellings, equal in number to the number of and available to the displaced persons who require these dwellings and reasonably accessible to their places of employment; [1989, c. 208, §§11, 21 (amd).]
  - D. Assist a person displaced from that person's business or farm operation in obtaining and becoming established in a suitable replacement location; [1989, c. 208, §§11, 21 (amd).]
  - E. Supply information concerning federal, state and local programs, which may be of assistance to displaced persons, and supply technical assistance to persons in applying for assistance under these programs; and [1989, c. 208, §§11, 21 (amd).]
  - F. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation. [1971, c. 333, § 1 (new).] [1989, c. 208, §§11, 21 (amd).]

3. **Coordination.** The department shall coordinate relocation activities with project work, and other planned or proposed federal, state or local agency actions in the community or nearby areas which may affect the efficient and effective carrying out of relocation assistance programs. [1989, c. 208, §§11, 21 (amd).]
4. **Renter eligibility.** Notwithstanding section 242, subsection 3, paragraph B, subparagraph(2), in any case in which the department acquires property for a program or project, any person who occupies that property on a rental basis for a short term or for a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the department. [1989, c. 208, §§11, 21 (new).]

#### **§244. Moving and related expenses**

1. **Payments.** Whenever a program or project to be undertaken by the department will result in the displacement of any person, the department shall make a payment to any displaced person, upon proper application on forms approved by the department, for:
  - A. Actual reasonable expenses in moving that person, that person's family, business, farm operation or other personal property; [1989, c. 208, §§12, 21 (amd).]
  - B. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the department; [1989, c. 208, §§12, 21 (amd).]
  - C. Actual reasonable expenses, but not to exceed \$1,000, in searching for a replacement business or farm; and [1989, c. 208, §§12, 21 (amd).]
  - D. Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by the department, but not to exceed \$10,000. [1989, c. 208, §§12, 21 (new).] [1989, c. 208, §§12, 21 (amd).]
2. **Fixed payments for residential displacements.** Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense and dislocation allowance, which shall be determined according to a schedule established by the department. [1989, c. 208, §§12, 21 (amd).]
3. **Fixed payments for business or farm displacements.** Any displaced person eligible for payments under subsection 1 who is displaced from that person's place of business or farm operation and who is eligible under criteria established by the department may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1. The payment shall consist of a fixed payment in an amount to be determined according to criteria established by the department, except that any such payment shall be not less than \$1,000 nor more than \$20,000. A person whose sole business at the

displacement dwelling is the rental of property to others shall not qualify for a payment under this subsection. In the case of a business no payment may be made under this subsection unless the department is satisfied that the business:

- A. Cannot be relocated without a substantial loss of its existing patronage; and [1989, c. 208, §§12, 21 (amd).]
- B. Is not part of a commercial enterprise having more than 3 other establishments not being acquired by the department, which are engaged in the same or similar business. [1989, c. 208, §§12, 21 (amd).] [1989, c. 208, §§12, 21 (amd).]

#### **§245. Administration**

The department shall carry out the functions of this subchapter either with its personnel or through any federal, state or municipal agency having an established organization for conducting relocation assistance programs; and is authorized and empowered to make all contracts and do all things necessary to fulfill the intent and purposes of this subchapter. [1989, c. 208, §§17, 21 (amd).]

#### **§246. Appeal**

1. **State Claims Commission.** If the department is unable to negotiate any payment authorized under section 244, subsection 1, paragraph A, or section 244-A, subsection 1, at what it deems to be a reasonable amount, either the department or the displaced person, or both, may apply to the State Claims Commission in writing for a determination and assessment. The proceedings shall then be the same as in condemnation proceedings under subchapter III. [1987, c. 395, Pt. A, § 104 (amd).]
2. **Commissioner of Transportation.** Any person aggrieved by a determination as to eligibility for any payment, except those enumerated in subsection 1, authorized by this subchapter may have that person's application reviewed by the commissioner or the commissioner's delegate whose determination shall be final and nothing in this section may be construed to give any person a cause of action in the State Claims Commission or the Superior Court. [1989, c. 208, §§19, 21 (amd).]

#### **§247. Limitation**

Nothing contained in this subchapter shall be construed as creating in any eminent domain proceeding an element of damages not in existence on the date of enactment hereof. [1971, c. 333, § 1 (new).]

Any payments authorized under this subchapter and received by a displaced person shall not be considered income for purposes under the Internal Revenue Code, or resources of any recipient of public assistance.

**TITLE 23, SECTIONS 301 – 307; CONTROLLED ACCESS HIGHWAYS****§301. Definition .**

A controlled access highway is a highway on which, in the interest of safety and efficiency of operation, abutting property owners have no right of direct access and on which the type and location of all access connections are determined and controlled by the department. [1971, c. 593, § 22 (amd).]

**§302. Use**

The department shall have full power and authority to lay out, establish, acquire, open, construct, improve, maintain, discontinue and regulate the use of controlled access highways within this State in the same manner or manners in which said department may now lay out, establish, acquire, open, construct, improve, maintain, discontinue and regulate the use of highways within the State. The department shall have any and all other additional authority and power relative to such controlled access highways as they now respectively possess relative to highways, including the authority and power to acquire or accept title to the lands or rights of way needed for the same. [1971, c. 593, § 22 (amd).]

In connection with the laying out and establishment of a controlled access highway the department may take in fee or lesser estate, by purchase, gift, devise or by eminent domain under chapters 1 to 19, part or all of any part of land adjoining the highway location which, by reason of such laying out and establishment of a controlled access highway, has been severed from legal access to any public highway. [1971, c. 593, § 22 (amd).]

**§303. Easements of access**

Where an existing highway has been designated as, or included within, a controlled access highway by said department, existing easements of access may be so extinguished by purchase or by taking under eminent domain, in accordance with any existing method now exercised by said department in purchasing or taking land for highway purposes. Access to such controlled access highway from any existing highway, road or street may be regulated and restricted by the department. Access to any such controlled access highway from any new highway, road or street shall be subject to the consent and approval of the department. [1971, c. 593, § 22 (amd).]

**§304. Commercial enterprises prohibited**

No commercial enterprise or activity shall be authorized or conducted by the department or any agency or officer of the State within or on the property or right-of-way acquired for any controlled access highway under this chapter, except that the department may permit the erection or installation of electric power, telegraph, telephone or pipe line facilities within the controlled area. [1971, c. 593, § 22 (amd).]

**§305. Signs showing service facilities**

The location of service, fuel and recreational facilities may be indicated to the users of any controlled access highway by appropriate signs erected within the right-of-way, at or near the junction of such access roads as may be provided. The size, style, specifications and location of such signs shall be determined by the department. [1971, c. 593, § 22 (amd).]

**§306. Application of provisions**

This chapter does not apply to highways other than those in the state highway system as designated by the department nor to those in the compact or built-up areas of any city or town as defined in title 29-A, section 2074, subsection 2, except with the approval of the municipal officers of the city or town wherein such compact or built-up area is situated. [1995, c. 65, Pt. A, §61 (amd); §153 (aff); Pt. C, §15 (aff).]

**§307. Powers as supplementary and additional**

This chapter shall be considered supplementary and in addition to any and all other powers now exercised by the department. [1971, c. 593, § 22 (amd).]

**TITLE 23, SECTIONS 651 –654; LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS****§651. State and state aid highways**

The department may alter, widen or change the grade of any state or state aid highway whenever in its judgment the public exigency may require, and may lay out, establish and open a new highway as a state highway, and upon appropriate petition from municipal officers may lay out, establish and open a new highway as a state aid highway. It may discontinue a highway, or a portion thereof, as a state or state aid highway and the same shall be thereafter maintained by the town or county originally liable therefor except as otherwise provided. [1971, c. 593, §22 (amd).]

The department may preserve and develop the natural scenic beauty along and adjacent to any state or state aid highway to integrate the public improvement with the aesthetics of the area traversed by the highway and may establish and maintain rest areas, turn-outs and parking strips for the suitable accommodation of the public whenever in its judgment the public exigency may require. [1971, c. 593, §22 (amd).]

The department may construct ditches and drains to carry water away from any highway that is under its supervision or that it is constructing, and over or through any lands of persons or corporations when it deems it necessary for public convenience or for the proper care of such highway. No such ditch or drain shall pass under or within 20 feet of any dwelling house without the consent of the owner thereof. [1971, c. 593, §22 (amd).]

Wherever, on or along public highways, ditches or drains have existed for a period of 20 years or longer, which cause water to be flowed away from the highway, there shall be a conclusive presumption that easements for such flowage from such ditches or drains exist, but only to the extent of the original flowage. This paragraph does not apply in the cases protected by section 6025. [1987, c. 141, Pt. B, §18 (amd).]

Whenever a municipality directly contributes to the construction or alteration of any highway, the department shall take into consideration the views of the municipal officers as to the location of such highway. [1971, c. 593, §22 (amd).]

The department, at its discretion, may authorize a person, corporation or entity who has had conditions imposed pursuant to Title 23, section 704-A or by other governmental review to perform construction work on the state or state aid highway system and on town ways. The performance of the work must be in compliance with the department's standards for highway and bridge construction, traffic control and bonding and any other standards or conditions the department may impose. All of the department's expenses and administrative costs relating to the work must be paid by the person authorized to perform the work. Notwithstanding the Maine Tort Claims Act, Title 14, chapter 741, the State or its employees are immune from suit for damages arising from any activities performed in connection with this work. [1999, c. 468, §1 (amd).]

**§652. Proceedings on damage claims**

1. **Change of grade.** Whenever the department changes the grade of any state or state aid highway, as provided in chapters 1 to 19, to the injury of an owner of adjoining land, that owner may apply, within 24 months after completion of the work according to the records of the department, to the department in writing for a determination and assessment of damages. If the department is unable to settle that damages at what it deems a reasonable amount, the department or interested parties may apply to the State Claims Commission in writing for a determination and assessment of the damages. The proceedings shall then be the same as in condemnation cases. [1987, c. 769, Pt. A, §83 (rpr).]
2. **Private water supplies.** In the event an owner of land adjacent to a state or state aid highway conceives that a private water supply on that land has been destroyed or rendered unfit for human consumption by the department constructing, reconstructing or maintaining the highway, such owner may apply in writing to the department for a determination of the alleged cause and assessment of the damage and if such claim is founded on construction, the owner shall present such application within 24 months after completion date of the work as that date appears in the records of the department.

The application shall set forth the name and address of the owner, the owner's source of title, the location of the property, a description of the damage, the cause to which the damage is attributed and the name and address of any lien holder.

- A. If the department determines that it did not cause the alleged damage to such water supply, a copy of the determination shall be served by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. [1971, c. 593, § 22 (amd).]
- B. If the department determines that any damage to the privately owned water supply was caused by the department constructing, reconstructing or maintaining the highway, a copy of the determination shall be served by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court and shall set forth an offer of settlement which shall be either:
  - (1) To replace the water supply; or
  - (2) To repair the damage to the water supply; or
  - (3) To pay a designated sum of money; or
  - (4) To purchase the realty served by the water supply in the event the cost of repair or replacement of the water supply exceeds the appraisal value of the realty. [1971, c. 593, § 22 (amd).]
- C. The department may issue rules and regulations in accordance with standards of the Department of Human Services and the Public Health Service regarding water potability for the determination of the degree of contamination, pollution or fitness for domestic use. [1975, c. 293, § 4 (amd).]

- D. The department shall in its determination consider the necessity for installation or replacement of piping, tanks, pumps, heating systems or other related fixtures. The Department of Transportation shall not condition installation or replacement on the owner giving possession or title of any privately owned piping, tanks, pumps, heating systems or other related fixtures on his land to any agency of this State, unless agreed to by the property owner. [1975, c. 2 (new).]
  - E. If the department is unable to settle at what it deems a reasonable settlement, the department or owner may apply to the State Claims Commission in writing for a determination of the alleged cause and assessment of the damage. The proceedings shall then be the same as in condemnation cases. [1987, c. 769, Pt. A, §84 (rpr).]
  - F. This subsection shall not apply to private water supplies after June 26, 1969 where the location does not allow for or provide for adequate surface drainage. [1973, c. 625, § 132 (amd).]
  - G. This subsection shall not apply to private water supplies now located or hereafter located within the right-of-way limits. [1969, c. 435 (new).]
  - H. This subsection shall not apply to any private water supply damaged by construction, reconstruction or maintenance which the department determines to have already been contaminated or polluted by another source to the degree said contamination or pollution would have rendered it unfit for human consumption. [1971, c. 593, § 22 (amd).] [1987, c. 769, Pt. A, §84 (amd).]
3. **Private water supplies within the right-of-way.** In order to prevent undue hardship to properties served by water systems existing within the right-of-way of state and state aid highways prior to June 26, 1969, and which are the sole source of water supply to the property, and which are destroyed or altered, subsequent to the effective date of this Act, due to highway construction or reconstruction, the Department of Transportation is authorized to compensate the owners for such loss as may be determined equitable by the department. [1979, c. 140 (new)]

### §653. Highway boundaries

- 1. **Authority.** The department may establish the boundary lines, limits or locations of any or all state highways and state aid highways and cause durable monuments to be erected at the angles thereof. [1999, c. 188, §1 (new).]
- 2. **Reestablishment of lost or doubtful boundaries.** Whenever in the opinion of the department the boundary lines, limits or location of any state highway or state aid highway or any part thereof are lost, uncertain or doubtful, the department may reestablish those lines, limits or location; land lying within those lines is a part of the highway right-of-way. The department shall file with the town clerk of the town in which the highway is located and with the registry of deeds in the county in which the highway is located maps showing the boundary lines, limits or location of such a reestablished highway, and those lines,

boundaries, limits and location are those of the reestablished highway. The department shall post descriptions of those parts of such highways that lie within towns in one conspicuous place in those towns and at 2 points along the highway, and it shall publish a description of those parts of highways that lie within any county in a newspaper, if any, in that county.

In the absence of record, plan or layout sufficient to reestablish the boundary lines, limits or location of a state highway or state aid highway, the width of a state highway or state aid highway is deemed to extend to and include the area lying outside the shoulders and ditch lines and within any landmarks or historic features such as fences, fence posts, tree rows, stone walls, corner stones or other monuments indicating the boundary line.

In the absence of record, plan or layout or any landmarks or historic features that evidence the location of the boundaries of the right-of-way, the width of a state highway or state aid highway is deemed to extend to and include the sidewalks, shoulders and ditch lines adjacent to that highway and to the top of cuts or toe of fills where they exist.

Any person aggrieved by the reestablishment of boundary lines, limits and location of a reestablished highway may file a complaint for the assessment of damages to the Superior Court in the county where the reestablished highway is located within 60 days from the filing of maps with the registry of deeds, and not thereafter, and the court shall assess the damages, if any, by jury, as long as the reestablished boundary lines, limits or location are not the same as originally established. The department shall pay from its funds all expenses incurred and the amount of final judgment and costs if damages are awarded, except that the amount of the final judgment and costs must be paid by the plaintiff if the plaintiff fails to recover any damages.

[1999, c. 188, §1 (new).]

#### **§654. Detour roads and signs**

Before a state or state-aid highway is closed due to construction, the department shall establish a practical detour route and properly sign the route at all intersections. The detour route shall be maintained in a condition adequate to serve traffic until the state or state-aid highway under construction is opened to traffic. Upon completion of the construction project all detour signs shall be removed. [1989, c. 108, §1 (rpr).]

**TITLE 23, SECTION 2952 – LONGTIME BUILDINGS AND FENCES AS BOUNDS – ESTOPPEL****§2952. Longtime buildings and fences as bounds; estoppel**

When buildings or fences have existed more than 20 years fronting upon any way, street, lane or land appropriated to public use, the bounds of which cannot be made certain by records or monuments, such buildings or fences shall be deemed the true bounds thereof. When the bounds can be so made certain, no time less than 40 years will justify their continuance thereon, and on indictment and conviction they may be removed. Persons owning lands beside a highway or town way on which are buildings or fences that encroach within the limits of said way may, by a writing under seal by them signed and acknowledged and recorded in the registry of deeds for the county or registry district in which the land lies, admit to the municipal officers of the town in which said way exists the true bounds or limits of said way and the extent of their wrongful occupancy thereof. Thereafter such persons, and all claiming title under or through them, shall be estopped from asserting any right to the continuance of such buildings or fences within said limits for the full term of 40 years from the date of such deed.

**TITLE 23, SECTIONS 3021 – 3035; ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES****§3021. Definitions**

1. **Highway purposes.** "Highway purposes" means use as a town way and those things incidental to the laying out, construction, improvement, maintenance, change of location, alignment and drainage of town ways, including the securing of materials therefore; provision for the health, welfare and safety of the public using town ways; provision for parking places, rest areas and preservation of scenic beauty along town ways. [1975, c. 711, § 8 (new).]
2. **Public easement.** "Public easement" means an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to the effective date of this Act. Private ways created pursuant to sections 3001 and 3004 prior to the effective date of this Act are public easements. [1975, c. 711, § 8 (new).]
3. **Town way.** "Town way" means:
  - A. An area or strip of land designated and held by a municipality for the passage and use of the general public by motor vehicle; [1981, c. 702, Pt. Z, § 2 (new)]
  - B. All town or county ways not discontinued or abandoned before July 29, 1976; and [1981, c. 702, Pt. Z, § 2 (new).]
  - C. All state or state aid highways, or both, which shall be classified town ways as of July 1, 1982, or thereafter, pursuant to section 53. [1981, c. 702, Pt. Z, § 2 (new).] [1981, c. 702, Pt. Z, § 2 (rpr).]

**§3022. Laying out of town ways and public easements**

The municipal officers may, personally or by agency, lay out, alter or widen town ways. They shall give written notice of their intentions posted at least 7 days in 2 public places in the municipality and in the vicinity of the way and shall in the notice describe the proposed way. [1975, c. 711, § 8 (new).]

The municipal officers may, upon the petition of any person, lay out, alter or widen a town way. [1975, c. 711, § 8 (new).]

The municipal officers may on petition therefor, personally or by agency, lay out a public easement for any occupant of land or for owners who have cultivated land in the municipality if the land will be connected to a town way or highway after the establishment of the public easement. [1979, c. 127, § 153 (rpr).]

After a public easement has been laid out, it may be taken pursuant to section 3023. Notwithstanding any other provision of this chapter, public easements laid out under this section are

limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42. [1995, c. 65, Pt. A, §65 (amd); §153 (aff); Pt. C, §15 (aff).]

### **§3023. Eminent domain**

A municipality may take property or interests therein for highway purposes if the municipal officers determine that public exigency requires the immediate taking of such property interests, or if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective. [1975, c. 711, § 8 (new).]

In municipalities where the municipal officers have the legislative power of appropriation, the municipal officers shall file with the municipal clerk a condemnation order that includes a detailed description of the property interests to be taken, which shall specify its location by metes and bounds, the name or names of the owner or owners of record so far as they can be reasonably determined and the amount of damages determined by the municipal officers to be just compensation for the property or interest therein taken. The municipal officers shall then serve upon the owner or owners of record a copy of the condemnation order and a check in the amount of the damages awarded. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the municipality upon service of the order of condemnation and check or upon recordation in accordance with section 3024, whichever occurs first. [1975, c. 711, § 8 (new).]

In towns where the town meeting has the legislative power of appropriation, the municipal officers shall file the condemnation order described in the previous paragraph with the town clerk and send a copy to the owner or owners of record by registered mail. No interest shall pass to the town unless an article generally describing the property interest to be taken and stating the amount of damages to be paid has been approved by a duly called town meeting. The town meeting may not amend the article, except to increase the amount of damages to be paid. If the article is approved, a check in the amount of damages authorized shall be served immediately upon the owner or owners of record. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the town upon service of the check or upon recordation in accordance with section 3024, whichever occurs first. [1975, c. 711, § 8 (new).]

Unless specifically provided in the order of condemnation or unless the property or interests to be taken include land or right-of-way of a railroad corporation or a public utility, title to property taken for town ways after December 31, 1976, shall be in fee simple absolute. [1975, c. 770, § 98 (rpr).]

### **§3024. Recording of proceedings**

In all proceedings under this section, an award of damages by the municipal legislative body shall be considered an appropriation for that purpose. [1975, c. 711, § 8 (new).]

No taking of property or interests therein by a municipality, or the discontinuance of a town way except by abandonment, after September 12, 1959, shall be valid against owners of record or abutting landowners who have not received actual notice, unless there is recorded in the registry of deeds for the county where the land lies either a deed, or a certificate attested by the municipal clerk, describing the property and stating the final action of the municipality with respect to it. [1975, c. 711, § 8 (new).]

**§3025. Dedication and acceptance**

No property or interests therein may be dedicated for highway purposes unless the owner of such property or interest has filed with the municipal officers a petition, agreement, deed, affidavit or other writing specifically describing the property or interest and its location, and stating that the owner voluntarily offers to transfer such interests to the municipality without claim for damages, or has filed in the registry of deeds an approved subdivision plot plan which describes property to be appropriated for public use. [1975, c. 711, § 8 (new).]

A municipality may accept a dedication of property or interests therein by an affirmative vote of its legislative body. [1975, c. 711, § 8 (new).]

Unless specifically provided by the municipality, title to property accepted for highway purposes after December 31, 1976 shall be in fee simple. [1975, c. 711, § 8 (new).]

**§3026. Discontinuance of town ways**

1. **General procedures.** A municipality may terminate in whole or in part any interests held by it for highway purposes. A municipality may discontinue a town way or public easement after the municipal officers have given best practicable notice to all abutting property owners and the municipal planning board or office and have filed an order of discontinuance with the municipal clerk that specifies the location of the way, the names of abutting property owners and the amount of damages, if any, determined by the municipal officers to be paid to each abutter.

Upon approval of the discontinuance order by the legislative body, and unless otherwise stated in the order, a public easement shall, in the case of town ways, be retained and all remaining interests of the municipality shall pass to the abutting property owners to the center of the way. For purposes of this section, the words "public easement" shall include, without limitation, an easement for public utility facilities necessary to provide service.

[1981, c. 683, § 1 (new).]

3. **Definition of best practicable notice.** "Best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality. [1981, c. 683, § 1 (new).]

**§3027. Vacation of proposed town ways in land subdivision; revocation of dedication**

1. **Vacation of ways.** Where proposed town ways have been described in a recorded subdivision plan and lots have been sold with reference to the plan, the municipal officers, after notice to the municipal planning board or office, may, on their own initiative, on petition of the abutting property owners or on petition of any person claiming a property interest in the proposed way, vacate in whole or in part proposed ways that have not been accepted. The municipal officers shall give best practicable notice, as defined in section 3026, subsection 2, of the proposed vacation to owners of lots on the recorded subdivision plan and their mortgagees of record. The notice shall conform in substance to the following form:

## NOTICE

The municipal officers of) (A petition has been filed with the municipal officers of) (Name of Town or City) (propose to) (to vacate) the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the County Registry of Deeds, Book of Plans, Volume , Page .

(Herein list or describe ways to be vacated)

If the municipal officers enter an order vacating (these ways) (this way) any person claiming an interest in (these ways) (this way) (adverse to the claims of the petitioners) must, within one (1) year of the recording of the order, file a written claim thereof under oath in the County Registry of Deeds and must, within one hundred eighty (180) days of the filing of the claim, commence an action in the Superior Court in County in accordance with the Revised Statutes Title 23, section 3027-A.

The municipal officers shall file an order of vacation with the municipal clerk that specifies the location of the way, the names of owners of lots on the recorded subdivision plan and the amount of damages, if any, determined by the municipal officers to be paid to each lot owner or other person having an interest in the way. Damages and reasonable costs as determined by the municipal officers shall be paid by the petitioners, if any.

[1987, c. 385, § 1 (amd).]

2. **Revocation of dedication.** A dedication of property or interest therein to the municipality described in a recorded subdivision plot plan may not be revoked or vacated by the dedicator unless no lot has been sold with reference to the plan, and unless an amended subdivision plan has been approved by the municipal subdivision review authority and recorded in the appropriate registry of deeds. [1981, c. 683, § 2 (new).]

### §3027-A. Recording of vacation orders; rights of action; prior orders

1. **Recording of vacation order.** A copy of the order of vacation by the municipal officers entered under section 3027 shall be recorded in the registry of deeds where the plan of subdivision is recorded and shall contain an alphabetical listing of the names of the subdivision lot owners and their mortgagees of record whose interests may be affected by the order. The register of deeds shall make a cross-reference to the order of vacation upon or attached to the face of the subdivision plan. The register of deeds shall also index the order under the names of the lot owners whose names appear in the body of the order. Any order of vacation entered prior to the effective date of this section may be recorded by the municipal officers in the same manner and with the same effect set forth in this section. [1981, c. 683, § 3 (new).]
2. **Rights of action.** All persons are forever barred from maintaining any action at law or in equity to establish, recover, confirm or otherwise enforce any right claimed to or in a proposed or described vacated way by reason of the ownership by the claimant or by an predecessor in title of a lot or parcel of land shown on a recorded subdivision plan, unless, within one year of the date of recordation of the order of vacation, the claimant files in the

registry of deeds where the subdivision plan is recorded a statement under oath specifying the nature, basis and extent of the claimed interest in the way. The claim is forever barred unless, within 180 days after the recording of the statement, the claimant or any other person acting on behalf of the claimant commences an action in equity under Title 14, chapter 723, to establish the rights asserted to or in the way. These limitation periods are not tolled or interrupted by any disability, minority, lack of knowledge or absence from this State of any claimant. Upon the trial of an action, the court shall grant judgment for the claimant only if it finds that the claimant has acquired an interest in the proposed way and that the deprivation of rights in the proposed way unreasonably limits access from a public way, a public body of water or common land or facility to the land of the claimant shown on the recorded subdivision plan. Any judgment rendered by the court in the action may, in the discretion of the court, grant the claimant reasonable damages instead of establishment of the claimant's rights. [1981, c. 683, § 3 (new).]

3. **Prior orders.** A person claiming an interest in a proposed unaccepted way vacated under section 3027 prior to the effective date of this section may cause an attested copy of that order to be recorded in the registry of deeds where the subdivision plan describing or showing the way is recorded. That person shall append to the order to be recorded an alphabetical listing of the names of the current subdivision lot owners and their mortgagees of record whose interest in the way may be affected by the order. The register of deeds shall also index the order under the names of the lot owners appearing in the appendix.

Within 20 days of the recording of a prior order, the person causing the order to be recorded shall give notice of his claim to all current owners of lots on the subdivision plan and their mortgagees of record by mailing by the United States Postal Service, postage prepaid, a notice informing them of his claim and advising them that, to preserve any claim adverse to his, they must file a claim and commence an action as required by subsection 2. The notice shall conform in substance to the following form:

#### NOTICE

On , 19 , the municipal officers of (Name of Town or City) entered an order vacating the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the Registry of Deeds Book of Plans, Volume , Page .

(Herein list vacated ways)

The undersigned claims to own the (ways) (way) described above. A copy of the order of the municipal officers was recorded in the Registry of Deeds on , 19 , and any person claiming an interest in (these ways) (this way) adverse to the claims of the undersigned must, within one (1) year of the date of the recording of the above order, file a written claim under oath in the Registry of Deeds and must, within one hundred eighty (180) days thereafter, commence an action in the Superior Court in County in accordance with the Revised Statutes, Title 23, section 3027-A.

**§3028. Abandonment of public ways**

- 1. Presumption of abandonment.** It is prima facie evidence that a town or county way not kept passable for the use of motor vehicles at the expense of the municipality or county for a period of 30 or more consecutive years has been discontinued by abandonment. A presumption of abandonment may be rebutted by evidence that manifests a clear intent by the municipality or county and the public to consider or use the way as if it were a public way. A proceeding to discontinue a town or county way may not prevent or estop a municipality from asserting a presumption of abandonment. A municipality or its officials are not liable for nonperformance of a legal duty with respect to such ways if there has been a good faith reliance on a presumption of abandonment. Any person affected by a presumption of abandonment, including the State or a municipality, may seek declaratory relief to finally resolve the status of such ways. A way that has been abandoned under this section is relegated to the same status as it would have had after a discontinuance pursuant to section 3026, except that this status is at all times subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use. A presumption of abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless other evidence exists that shows a clear intent by the municipality or county to consider or use the way as if it were a public way. [1991, c. 195 (new).]
- 2. Status of town way or public easement.** The determination of the municipal officers regarding the status of a town way or public easement is binding on all persons until a final determination of that status has been made by a court, unless otherwise ordered by a court during the pendency of litigation to determine the status. [1991, c. 195 (new).]
- 3. Removal of obstructions.** If the municipal officers have determined under subsection 2 that the way is a town way or public easement and a court has not ordered otherwise, the municipality or an abutter on the way, acting with the written permission of the municipal officers, may remove any gates, bars or other obstructions in the way. [1991, c. 195 (new).]

**§3029. Damages; appeal**

Damages shall be determined using the methods in sections 154 through 154E, as far as practicable, except that references to the "commission" or the "board" shall mean the "municipal officers" and references to the "state" shall mean the "municipality." [1977, c. 479, § 5 (amd).]

Any person aggrieved by the determination of the damages awarded to owners of property or interests therein under this chapter may, within 60 days after the day of taking, appeal to the Superior Court in the county where the property lies. The court shall determine damages by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto. [1975, c. 711, § 8 (new).]

Any person aggrieved by the action or nonaction of municipal officers or the municipal legislative body in proceedings under this chapter, other than a determination of damages, may appeal to the

Superior Court in the county where the property lies, pursuant to Rule 80B of the Rules of Civil Procedure. [1975, c. 711, § 8 (new).]

### **§3030. Purchase; prescription**

Nothing in this chapter shall be construed to abridge the authority of a municipality to acquire property or interests therein for highway purposes by purchase, or to modify the law relating to acquisition of property by a municipality through prescriptive use

### **§3031. Public and private rights in proposed, unaccepted ways in subdivisions**

1. **Public rights.** From the date of recording of a subdivision plan in the registry of deeds, the public acquires rights of incipient dedication to public use of the ways laid out on the plan. If a proposed way laid out in the plan is not accepted by the municipality within 20 years from the date of recording of the plan, the public rights in that way terminate. [1987, c. 385, § 2 (new).]
2. **Private rights.** A person acquiring title to land shown on a subdivision plan recorded in the registry of deeds acquires a private right-of-way over the ways laid out in the plan. If a proposed, unaccepted way is not constructed within 20 years from the date of recording of the plan, and if the private rights created by the recording of the plan are not constructed and utilized as private rights within that 20-year period, the private rights-of-way in that way terminate.

Unless title has been reserved pursuant to Title 33, section 469-A, when the private rights established by this subsection are terminated as provided in this subsection or by order of vacation by the municipality, the title of the fee interest in the proposed, unaccepted way for which the private rights-of-way have terminated passes to the abutting property owners to the centerline of the way.

3. **Shorter duration of public and private rights; rights of lesser extent.** Notwithstanding subsections 1 and 2, the developer or other person recording a subdivision plan in the registry of deeds may set a shorter duration for the public and private rights established in subsections 1 and 2 than the period provided in those subsections. The developer or other person recording the subdivision plan shall cause the shorter duration to be noted on the face of the subdivision plan.

Pursuant to a subdivision review under Title 30-A, chapter 187, subchapter IV, the municipal reviewing authority may set a shorter duration for the public and private rights established in subsections 1 and 2 than the period provided in those subsections. The municipal reviewing authority shall cause the shorter duration to be noted on the face of the subdivision plan.

Nothing in this section may be construed to prohibit the developer or other person recording a subdivision plan in the registry of deeds from granting rights of lesser extent than those established in subsections 1 and 2. If rights of lesser extent are granted, the person recording the subdivision plan shall cause the extent of those rights to be described on the

face of the subdivision plan and in any conveyance of land shown on the plan. [1995, c. 462, Pt. B, §4 (amd).]

4. **Fee interest reserved by owner of subdivision.** If the owner of land for which a subdivision is proposed reserves the fee interest in any ways proposed on the subdivision plan, the owner shall place a statement of this reservation in all conveyances by him of land in the subdivision. [1987, c. 385, § 2 (new).]

### **§3032. Proposed, unaccepted ways deemed vacated**

1. **Deemed vacation.** [1997, c. 386, §1 (rp).]

**1-A. Deemed vacation.** A proposed, unaccepted way or portion of a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds prior to September 29, 1987 is deemed to have been subject to an order of vacation under section 3027 if, by the later of 15 years after the date of the recording of the subdivision plan laying out the way or portion of the way or September 29, 1997, both of the following conditions have been met:

- A. The way or portion of the way has not been constructed or used as a way; and [1997, c. 386, §2 (new).]
- B. The way or portion of the way has not been accepted as a town, county or state way or highway or as a public, utility or recreational easement. [1997, c. 386, §2 (new).]

A way or portion of a way considered vacated under this subsection is subject to section 3033.

[1997, c. 386, §2 (new).]

2. **Extensions.** The municipal officers of the affected municipality may except a proposed, unaccepted way or portion of a proposed, unaccepted way described in subsection 1-A from the operation of the time limitations of that subsection by filing, in the registry of deeds where the subdivision plan is recorded, a notice stating that the way or portion of the way is excepted from the operation of subsection 1-A for a period of 20 years from the filing of the notice. To be effective, this exception must be filed prior to the expiration of the time limitations of subsection 1-A. An extension accomplished under this subsection may be extended by the municipal officers for a subsequent 20-year period by the filing of a new notice within the preceding 20-year extension period. [1997, c. 683, Pt. B, §10 (amd); §11 (aff).]

### **§3033. Rights of action concerning ways deemed vacated**

1. **Notice by person claiming ownership.** Any person claiming to own a proposed, unaccepted way or portion of a proposed, unaccepted way deemed vacated under section

3032 may record, in the registry of deeds where the subdivision plan, to which the notice set forth in this subsection pertains, is recorded, a conformed copy of the notice set forth in this subsection, with an alphabetical listing of the names of the current record owners of lots on the subdivision plan to which the notice pertains and their mortgagees of record. The person shall give notice of his claim to these current record owners and their mortgagees of record. Within 20 days of recording of the notice, the person shall give this notice by mailing, by the United States postal service, postage prepaid, to the current record owners and mortgagees, a copy of the notice set forth below:

#### NOTICE

By virtue of the Maine Revised Statutes, Title 23, section 3032, the following proposed, unaccepted ways or portions of proposed, unaccepted ways were deemed by law to have been vacated by the municipal officers of (name of town or city) . The ways or portions of ways so vacated are shown on a plan (named) (dated) (and) recorded in the County Registry of Deeds, Book of Plans, Volume , Page , (Folio #) and are described as follows:

(Herein list vacated ways or portions of ways)

The undersigned claims to own the (way or ways) (portion of way or ways) described above. Any person claiming an interest in (this way or these ways) (a portion of this way or these ways) adverse to the claim of the undersigned, within one year from the date of recording of a copy of this notice in the registry of deeds, must file a written claim, under oath, in the same registry and, within 180 days thereafter, must commence an action in Superior Court in County in accordance with the Maine Revised Statutes, Title 23, section 3033. A copy of this notice was recorded in the registry of deeds on , 19 .

[1987, c. 385, § 2 (new).]

2. **Rights of action by persons receiving notice.** All persons receiving a notice under subsection 1, who claim any private right of any kind in the way or portion of a way to which the notice pertains, are forever barred from maintaining any action at law or in equity to establish, recover, confirm or otherwise enforce any right claimed to or in the way or portion of a way by reason of the ownership by the person, or by a predecessor in title, of a lot or parcel of land shown on the recorded subdivision plan to which the notice pertains, unless, within one year from the date of recording of the notice, the person files in the registry of deed where the pertinent subdivision plan is recorded a statement, under oath, specifying the nature, basis and extent of the claimed interest in the way or portion of a way. The claim is forever barred unless, within 180 days of the recording of the statement, the claimant, or a person acting on his behalf, commences an action in equity under Title 14, chapter 723, to establish the rights asserted to or in the way or portion of a way.

The limitation periods in this section are not tolled or interrupted by any disability, minority, lack of knowledge or absence from this State by the claimant.

[1987, c. 385, § 2 (new).]

3. **Trial of an action.** Upon trial of an action initiated under subsection 2, the court shall grant judgment for the claimant only if it finds that:

- A. The claimant has acquired an interest in the way or portion of a way; and [1987, c. 385, § 2 (new).]
- B. The deprivation of the claimant's rights in the way or portion of the way unreasonably limits the claimant's access from his land shown on the recorded subdivision plan to:
  - (1) A public way;
  - (2) A public body of water; or
  - (3) Common land or a common facility within the subdivision.

[1987, c. 385, § 2 (new).]

Any judgment rendered by the court in an action under subsection 2, in the discretion of the court, may grant the claimant reasonable damages instead of establishment of the claimant's rights, except that under no circumstances shall a municipality be liable for any damages granted by any judgment rendered by the court under subsection 2.

#### §3034. Structures located in proposed ways

1. **Action to compel removal.** When any structure, for 20 years, has been continuously located, in whole or in part, within a proposed, unaccepted way laid out in a subdivision plan recorded in the registry of deeds, and lots have been sold with reference to this plan, no action may be maintained by any person to compel removal of the structure based upon the fact of its location within the proposed, unaccepted way. For the purposes of this section, person includes a corporation, partnership, governmental entity or other entity.

Nothing in this section may be construed to restrict or affect private rights in a proposed, unaccepted way which come into existence under common law, in equity or under existing statutes. This section shall not be construed for any reason to extend the 20-year period set forth in this subsection.

[1987, c. 385, § 2 (new).]

2. **Applicability.** This section applies to structures existing and proposed, unaccepted ways laid out on subdivision plans recorded in registries of deeds before, on or after the effective date of this section, except that:
- A. When a structure is located within a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds 20 years or more before the effective date of this section, any person, other than the owner of the structure, who claims a right or interest of any kind in the land within the proposed, unaccepted way, or any person claiming by, through or under such a person, may preserve his right or interest by recording the notice set forth in subsection 3, within 2 years after

the effective date of this section, in the registry of deeds where the pertinent subdivision plan is recorded; and [1987, c. 385, § 2 (new).]

- B. When a structure is located within a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds less than 20 years before the effective date of this section, any person, other than the owner of the structure, who claims a right or interest of any kind in the land within the proposed, unaccepted way, or any person claiming by, through or under such a person, may preserve his right or interest by recording the notice set forth in subsection 3, in the registry of deeds where the pertinent subdivision plan is recorded, within the later of:

- (1) Twenty years from the date of the recording of the subdivision plan, on which the way is laid out, in the registry of deeds; or
- (2) Two years after the effective date of this section.

[1987, c. 385, § 2 (new).]

A person seeking to preserve a right or interest under paragraph A or B, within one year after the recording of the notice, shall bring an action to quiet title to establish the existence and extent of his claimed right or interest.

[1987, c. 385, § 2 (new).]

**3. Notice.** The notice required under subsection 2, paragraphs A and B, shall contain:

- A. An intelligible description of the land in which the right or interest is claimed; [1987, c. 385, § 2 (new).]
- B. The name and address of the person on whose behalf the right or interest is claimed; [1987, c. 385, § 2 (new).]
- C. A description of the structure claimed to be within the proposed, unaccepted way in which the person claims a right or interest; [1987, c. 385, § 2 (new).]
- D. The name and address of the owner of the structure; [1987, c. 385, § 2 (new).]
- E. A description, including specific reference, by date of recording and the volume and page numbers, of the recorded instrument upon which the person claims the right to or interest in the recorded source of title; and [1987, c. 385, § 2 (new).]
- F. A duly verified oath taken by the person claiming the right or interest before a person authorized to administer oaths. [1987, c. 385, § 2 (new).]

[1987, c. 385, § 2 (new).]

4. **Register's duties.** In indexing a notice presented for recording under subsection 2, the register of deeds shall make an entry:

- A. In the grantee index of deeds under the name of the person making the claim in the notice; and [1987, c. 385, § 2 (new).]
- B. In the grantor index of deeds under the name of the owner of the structure described in the notice. [1987, c. 385, § 2 (new).]

The register of deeds may charge the same fee for recording the notice that is charged for recording deeds.

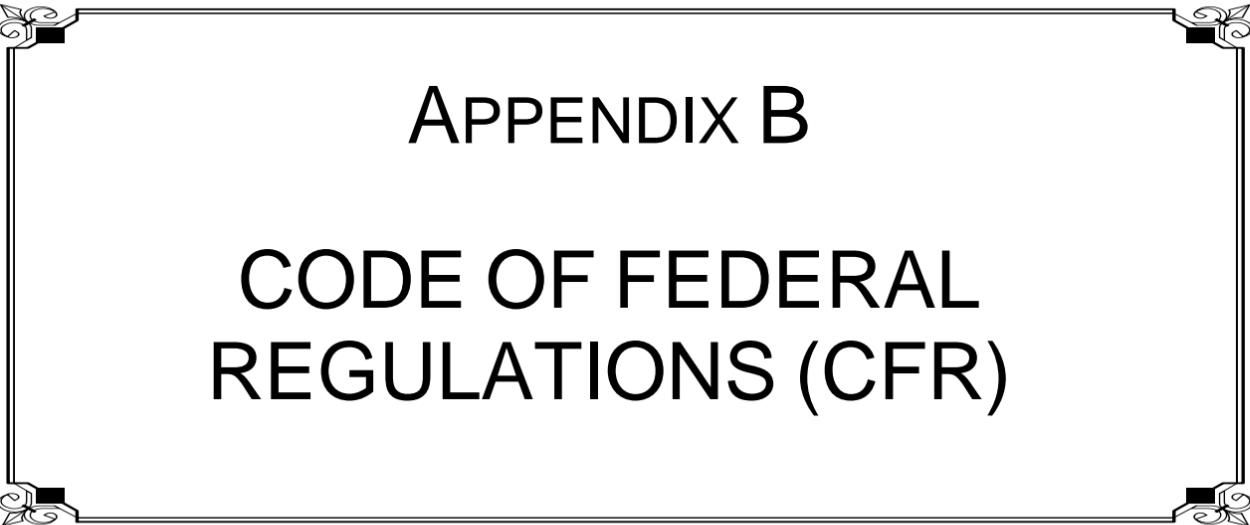
[1987, c. 385, § 2 (new).]

5. **Who may present notice for recording.** The notice required under subsection 2 may be presented for recording by the person claiming the right or interest or a person acting on his behalf. Disability or lack of knowledge by the person claiming the right or interest shall not extend the time limitations related to the recording of the notice. [1987, c. 385, §2 (new).]
6. **Mailing the notice.** Within 20 days of the recording of the notice required under subsection 2, the person who presented the notice for recording shall deliver or mail, to the owner's last-known address, a copy of the notice to the owner of the structure described in the notice. [1987, c. 385, § 2 (new).]

### §3035. Construction of laws

Nothing in sections 3031 to 3034 may be construed to extend the period for the bringing of an action or for the doing of any other required act under any statute of limitations. Nothing in those sections may be construed to affect the nature of any right or interest which may be claimed in property to which those sections apply, or to affect the law regarding the sale, release or other disposition of such a right or interest. [1987, c. 385, § 2 (new).]

Sections 3031 to 3034 shall be liberally construed to affect the legislative purpose of enhancing the merits of title to land by eliminating the possibility of ancient claims to proposed, unaccepted, unconstructed ways that are outstanding on the record but unclaimed. [1987, c. 385, §2 (new).]



APPENDIX B

CODE OF FEDERAL  
REGULATIONS (CFR)

MAINE RIGHT OF WAY MANUAL

*December 2010*



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-

**Authority:** Sec. 1307, Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

**Source:** 64 FR 71290, Dec. 21, 1999, unless otherwise noted.

### **Subpart A—General**

#### **§ 710.101 Purpose.**

The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23 of the United States Code in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

#### **§ 710.103 Applicability.**

This part applies whenever Federal assistance under title 23 of the United States Code is used. The part applies to programs administered by the Federal Highway Administration. Where Federal funds are transferred to other Federal agencies to administer, those agencies' procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate services website:

<http://www.fhwa.dot.gov/realestate/index.htm>

#### **§ 710.105 Definitions.**

(a) Terms defined in 49 CFR part 24, and 23 CFR part 1 have the same meaning where used in this part, except as modified in this section.

(b) The following terms where used in this part have the following meaning:

*Access rights* means the right of ingress to and egress from a property that abuts a street or highway.

*Acquiring agency* means a State agency, other entity, or person acquiring real property for title 23 of the United States Code purposes.

*Acquisition* means activities to obtain an interest in, and possession of, real property.

*Air rights* means real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

*Airspace* means that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

*Damages* means the loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner's property is acquired.

*Disposal* means the sale of real property or rights therein, including access or air rights, when no longer needed for highway right-of-way or other uses eligible for funding under title 23 of the United States Code.

*Donation* means the voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

*Early acquisition* means acquisition of real property by State or local governments in advance of Federal authorization or agreement.

*Easement* means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

*NHS* means the National Highway System as defined in 23 U.S.C. 103(b).

*Oversight agreement* means the project approval and agreement concluded between the State and the FHWA to outline which projects will be monitored at the plans, specifications, and estimate stage by FHWA as required by 23 U.S.C. 106(c)(3).

*Real property* means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

*Relinquishment* means the conveyance of a portion of a highway right-of-way or facility by a State highway department to another government agency for continued transportation use. (See 23 CFR part 620, subpart B.)

*Right-of-way* means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23 of the United States Code.

*Settlement* means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

(1) An *administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

(2) A *legal settlement* is a settlement reached by a responsible State legal representative after filing a condemnation proceeding, including stipulated settlements approved by the court in which the condemnation action had been filed.

(3) A *court settlement* or *court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

*State agency* means a department, agency, or instrumentality of a State or of a political subdivision of a State; any department, agency, or instrumentality of two or more

States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

*State transportation department (STD)* means the State highway department, transportation department, or other State transportation agency or commission to which title 23 of the United States Code funds are apportioned.

*Uneconomic remnant* means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.

*Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91–646, 84 Stat. 1894), and the implementing regulations at 49 CFR part 24.

### **Subpart B—Program Administration**

#### **§ 710.201 State responsibilities.**

(a) *Organization.* Each STD shall be adequately staffed, equipped, and organized to discharge its real property-related responsibilities.

(b) *Program oversight.* The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.

(c) *Right-of-way (ROW) operations manual.* Each STD which receives funding from the highway trust fund shall maintain a manual describing its right-of-way organization, policies, and procedures. The manual shall describe functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance. The manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The manual shall be in sufficient detail and depth to guide State employees and others involved in acquiring and managing real property. The State manuals should be developed and updated, as a minimum, to meet the following schedule:

(1) The STD shall prepare and submit for approval by FHWA an up-to-date Right-of-Way Operations Manual by no later than January 1, 2001.

(2) Every five years thereafter, the chief administrative officer of the STD shall certify to the FHWA that the current ROW operations manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation.

(3) The STD shall update the manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) *Compliance responsibility.* The STD is responsible for complying with current FHWA requirements whether or not its manual reflects those requirements.

(e) *Adequacy of real property interest.* The real property interest acquired for all Federal-aid projects funded pursuant to title 23 of the United States Code shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.

(f) *Recordkeeping.* The acquiring agency shall maintain adequate records of its acquisition and property management activities.

(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from either:

(i) The date the State receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property, or

(ii) The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State.

(2) Property management records shall include inventories of real property considered excess to project needs, all authorized uses of airspace, and other leases or agreements for use of real property managed by the STD.

(g) *Procurement.* Contracting for all activities required in support of State right-of-way programs through use of private consultants and other services shall conform to 49 CFR 18.36.

(h) *Use of other public land acquisition organizations or private consultants.* The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.

(i) *Approval actions.* Except for the Interstate system, the STD and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for under this part. The content of the most recent oversight agreement shall be reflected in the State right-of-way operations manual. The oversight agreement, and thus the manual, will indicate for which non-Interstate Federal-aid project submission of materials for review and approval are required.

(j) *Approval of just compensation.* The amount determined to be just compensation shall be approved by a responsible official of the acquiring agency.

(k) *Description of acquisition process.* The STD shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under State law and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English.

**§ 710.203 Funding and reimbursement.**

(a) *General conditions.* The following conditions are a prerequisite to Federal participation in the costs of acquiring real property except as provided in §710.501 for early acquisition:

- (1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);
- (2) The State has executed a project agreement;
- (3) Preliminary acquisition activities, including a title search and preliminary property map preparation necessary for the completion of the environmental process, can be advanced under preliminary engineering prior to National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) clearance, while other work involving contact with affected property owners must normally be deferred until after NEPA approval, except as provided in 23 CFR 710.503 for protective buying and hardship acquisition; and in 23 CFR 710.501, early acquisition. Appraisal completion may be authorized as preliminary right-of-way activity prior to completion of the environmental document; and
- (4) Costs have been incurred in conformance with State and Federal law requirements.

(b) *Direct eligible costs.* Federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise. Participation is provided for:

(1) *Real property acquisition.* Usual costs and disbursements associated with real property acquisition required under the laws of the State, including the following:

(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.

(ii) The cost of acquisition activities, such as, appraisal, appraisal review, cost estimates, relocation planning, right-of-way plan preparation, title work, and similar necessary right-of-way related work.

(iii) The cost to acquire real property, including incidental expenses.

(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process.

(v) The cost of minimum payments and appraisal waiver amounts included in the State approved manual.

(2) *Relocation assistance and payments.* Usual costs and disbursements associated with the following:

- (i) Relocation assistance and payments required under 49 CFR part 24, and
- (ii) Relocation assistance and payments provided under the laws of the State that may exceed the requirements of 49 CFR part 24, except for relocation assistance and payments provided to aliens not lawfully present in the United States.

(3) *Damages.* The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under applicable State law.

(4) *Property management.* The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.

(5) *Payroll-related expenses and technical guidance.* Salary and related expenses of employees of an acquiring agency are eligible costs in accordance with OMB Circular A-87 (available at <http://www.whitehouse.gov/omb/circulars>). This includes State costs incurred for managing or providing technical guidance, consultation or oversight on projects where right-of-way services are performed by a political subdivision or others.

(6) *Property not incorporated into a project funded under title 23 of the United States Code.* The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

- (i) *General.* Costs for construction material sites, property acquisitions to a logical boundary, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing.
- (ii) *Easements not incorporated into the right-of-way.* The cost of acquiring easements outside the right-of-way for permanent or temporary use.

(7) *Uneconomic remnants.* The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.

(8) *Access rights.* Payment for full or partial control of access on an existing highway (*i.e.*, one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

(9) *Utility and railroad property.* (i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an STD for a highway project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, Subpart B, Railroad-Highway Projects.

(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.

(c) *Withholding payment.* The FHWA may withhold payment under the conditions in 23 CFR 1.36 where the State fails to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.

(d) *Indirect costs.* Indirect costs may be claimed under the provisions of OMB Circular A–87. Indirect costs may be included on Federal-aid billings after the indirect cost rate has been approved by FHWA.

[64 FR 71290, Dec. 21, 1999, as amended at 67 FR 12863, Mar. 20, 2002]

### **Subpart C—Project Development**

#### **§ 710.301 General.**

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process are provided in this subpart.

#### **§ 710.303 Planning.**

State and local governments conduct metropolitan and statewide planning to develop coordinated, financially constrained system plans to meet transportation needs for local and statewide systems, under FHWA's planning regulations contained in 23 CFR part 450. In addition, air quality non-attainment areas must meet the requirements of the U.S. EPA Transportation conformity regulations (40 CFR parts 51 and 93). Projects must be included in an approved State Transportation Improvement Program (STIP) in order to be eligible for Federal-aid funding.

#### **§ 710.305 Environmental analysis.**

The National Environmental Policy Act (NEPA) process, as described in FHWA's NEPA regulations in 23 CFR part 771, normally must be conducted and concluded with a record of decision (ROD) or equivalent before Federal funds can be placed under agreement for acquisition of right-of-way. Where applicable, a State also must complete Clean Air Act (42 U.S.C. 7401 *et seq.*) project level conformity analysis. In areas in which the Clean Air Act conformity determination has lapsed, acquiring agencies must coordinate with Federal Highway Administration for special instructions prior to initiating new projects or continuing activity on existing projects. At the time of processing an environmental document, a State may request reimbursement of costs incurred for early acquisition, provided conditions prescribed in 23 U.S.C. 108(c) and 23 CFR 710.501, are satisfied.

#### **§ 710.307 Project agreement.**

As a condition of Federal-aid, the STD shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisitions, including hardship acquisition and protective buying (see 23 CFR 710.503). The STD must prepare a project agreement in accordance with 23 CFR part 630, subpart C. The agreement shall be based on an acceptable estimate for the cost of acquisition. On projects where the initial project agreement was executed after June 9, 1998, a State may request credit toward the non-Federal share, for early acquisitions, donations, or other contributions applied to the project provided conditions in 23 U.S.C. 323 and 23 CFR 710.501, are satisfied.

#### **§ 710.309 Acquisition.**

The process of acquiring real property includes appraisal, appraisal review, establishing just compensation, negotiations, administrative and legal settlements, and condemnation. The State shall conduct acquisition and related relocation activities in accordance with 49 CFR part 24.

#### **§ 710.311 Construction advertising.**

The State must manage real property acquired for a project until it is required for construction. Clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be included as a work item in the construction contract. On Interstate projects, prior to advertising for construction, the State shall develop ROW availability statements and certifications related to project acquisitions as required by 23 CFR 635.309. For non-Interstate projects, the oversight agreement must specify responsibility for the review and approval of the ROW availability statements and certifications. Generally, for non-NHS projects, the State has full responsibility for determining that right-of-way is available for construction.

#### **§ 710.313 Design-build projects.**

(a) In the case of a design-build project, right-of-way must be acquired and cleared in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and STD right-of-way procedures. The STD shall submit a right-of-way certification in accordance with 23 CFR 635.309(p) when requesting FHWA's authorization. If the right-of-way services are included in the Request for Proposal document, the STD shall ensure that right-of-way is available prior to the start of physical construction on individual properties.

(b) The decision to advance a right-of-way segment to the construction stage shall not impair the safety or in anyway be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project right-of-way.

(c) Certain right-of-way acquisition and clearance services may be incorporated into the design-build contract if allowed under State law. The contract may include language that provides that construction will not commence until all property is acquired and

relocations have been completed; or, the construction could be phased or segmented to allow right-of-way activities to be completed on individual properties or a group of properties, thereby allowing certification in a manner satisfactory to the STD for each phase or segment.

(d) If the STD elects to include right-of-way services in the design-build contract, the following provisions must be addressed in the request for proposals document:

(1)(i) The design-builder must submit written acquisition and relocation procedures to the STD for approval prior to commencing right-of-way activities. These procedures should contain a prioritized appraisal, acquisition, and relocation strategy as well as check points for STD approval, such as approval of just compensation, replacement housing payment calculations, replacement housing payment and moving cost claims, appraisals, administrative and stipulated settlements that exceed determined thresholds based on a risk management analysis, etc. STD's which have an FHWA approved procedures manual, in accordance with 23 CFR 710.201(c), may comply with this section by requiring the design-builder to execute a certification in its proposal that it has received the approved right-of-way manual and will comply with the procedures.

(ii) The written relocation plan must provide reasonable time frames for the orderly relocation of residents and businesses on the project as provided at 49 CFR 24.205. It should be understood that these time frames will be based on best estimates of the time it will take to acquire the right-of-way and relocate families in accordance with certain legal requirements and time frames which may not be violated. Accordingly, the time frames estimated for right-of-way acquisition will not be compressed in the event other necessary actions preceding right-of-way acquisition miss their assigned due dates.

(2)(i) The design-builder must establish a project tracking system and quality control system. This system must show the appraisal, acquisition and relocation status of all parcels.

(ii) The quality control system may be administered by an independent consultant with the necessary expertise in appraisal, acquisition and relocation policies and procedures, who can make periodic reviews and reports to the design-builder and the STD.

(3) The STD may consider the establishment of a hold off zone around all occupied properties to ensure compliance with right-of-way procedures prior to starting construction activities in affected areas. The limits of this zone should be established by the STD prior to the design-builder entering on the property. There should be no construction related activity within the hold off zone until the property is vacated. The design-builder must have written notification of vacancy from the right-of-way quality control consultant or STD prior to entering the hold off zone.

(4) Adequate access shall be provided to all occupied properties to insure emergency and personal vehicle access.

(5) Utility service must be available to all occupied properties at all times prior to and until relocation is completed.

(6) Open burning should not occur within 305 meters (1,000 feet) of an occupied dwelling.

(7) The STD will provide a right-of-way project manager who will serve as the first point of contact for all right-of-way issues.

(e) If the STD elects to perform all right-of-way services relating to the design-build contract, the provisions in §710.311 will apply. The STD will notify potential offerors of the status of all right-of-way issues in the request for proposal document.

[67 FR 75935, Dec. 10, 2002]

#### **Subpart D—Real Property Management**

##### **§ 710.401 General.**

This subpart describes the acquiring agency's responsibilities to control the use of real property required for a project in which Federal funds participated in any phase of the project. Prior to allowing any change in access control or other use or occupancy of acquired property along the Interstate, the STD shall secure an approval from the FHWA for such change or use. The STD shall specify in the State's ROW operations manual, procedures for the rental, leasing, maintenance, and disposal of real property acquired with title 23 of the United States Code funds. The State shall assure that local agencies follow the State's approved procedures, or the local agencies own procedures if approved for use by the STD.

##### **§ 710.403 Management.**

(a) The STD must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards.

(b) The STD shall specify procedures in the State manual for determining when a real property interest is no longer needed. These procedures must provide for coordination among relevant STD organizational units, including maintenance, safety, design, planning, right-of-way, environment, access management, and traffic operations.

(c) The STD shall evaluate the environmental effects of disposal and leasing actions requiring FHWA approval as provided in 23 CFR part 771.

(d) Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23 of the United States Code funding, except as

provided in paragraphs (d) (1) through (5) of this section. Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the general requirement for charging fair market value may be approved in the following situations:

(1) With FHWA approval, when the STD clearly shows that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation. The STD manual may include criteria for evaluating disposals at less than fair market value. Disposal for public purposes may also be at fair market value. The STD shall submit requests for such exceptions to the FHWA in writing.

(2) Use by public utilities in accordance with 23 CFR part 645.

(3) Use by Railroads in accordance with 23 CFR part 646.

(4) Use for Bikeways and pedestrian walkways in accordance with 23 CFR part 652.

(5) Use for transportation projects eligible for assistance under title 23 of the United States Code.

(e) The Federal share of net income from the sale or lease of excess real property shall be used by the STD for activities eligible for funding under title 23 of the United States Code. Where project income derived from the sale or lease of excess property is used for subsequent title 23 projects, use of the income does not create a Federal-aid project.

(f) No FHWA approval is required for disposal of property which is located outside of the limits of the right-of-way if Federal funds did not participate in the acquisition cost of the property.

(g) Highway facilities in which Federal funds participated in either the right-of-way or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620, subpart B.

#### **§ 710.405 Air rights on the Interstate.**

(a) The FHWA policies relating to management of airspace on the Interstate for non-highway purposes are included in this section. Although this section deals specifically with approval actions on the Interstate, any use of airspace contemplated by a STD must assure that such occupancy, use, or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 CFR 1.23.

(1) This subpart applies to Interstate facilities which received title 23 of the United States Code assistance in any way.

(2) This subpart does not apply to the following:

(i) Non-Interstate highways.

(ii) Railroads and public utilities which cross or otherwise occupy Federal-aid highway right-of-way.

(iii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H.

(iv) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) A STD may grant rights for temporary or permanent occupancy or use of Interstate system airspace if the STD has acquired sufficient legal right, title, and interest in the right-of-way of a federally assisted highway to permit the use of certain airspace for non-highway purposes; and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. The STD must obtain prior FHWA approval, except for paragraph (c) of this section.

(c) An STD may make lands and rights-of-way available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements

(d) An individual, company, organization, or public agency desiring to use airspace shall submit a written request to the STD. If the STD recommends approval, it shall forward an application together with its recommendation and any necessary supplemental information including the proposed airspace agreement to the FHWA. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart and conform to the provisions in the FHWA's Airspace Guidelines at: <http://www.fhwa.dot.gov/realestate/index.htm>.

#### **§ 710.407 Leasing.**

(a) Leasing of real property acquired with title 23 of the United States Code, funds shall be covered by an agreement between the STD and lessee which contains provisions to insure the safety and integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the State and the FHWA harmless, nondiscrimination, access by the STD and the FHWA for inspection, maintenance, and reconstruction of the facility.

(b) Where a proposed use requires changes in the existing transportation facility, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the STD and the FHWA.

(c) Proposed uses of real property shall conform to the current design standards and safety criteria of the Federal Highway Administration for the functional classification of the highway facility in which the property is located.

(a) Real property interests determined to be excess to transportation needs may be sold or conveyed to a public entity or to a private party in accordance with §710.403(d).

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the STD shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the States' disposal notification listing.

(c) Real property interests may be retained by the STD to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA, the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value no reversion clause is required. Disposal actions described in 23 CFR 710.403(d)(1) for less than fair market value require a public interest determination and FHWA approval, consistent with that section.

[64 FR 71290, Dec. 21, 1999, as amended at 67 FR 12863, Mar. 20, 2002]

#### **Subpart E—Property Acquisition Alternatives**

##### **§ 710.501 Early acquisition.**

(a) *Real property acquisition.* The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

(b) *Eligible costs.* Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State's share of a Federal-aid project if the following conditions are met:

- (1) The property was lawfully obtained by the State;
- (2) The property was not land described in 23 U.S.C. 138;
- (3) The property was acquired in accordance with the provisions of 49 CFR part 24;
- (4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4);
- (5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:

- (i) The decision on need to construct the project;
  - (ii) The consideration of alternatives; and
  - (iii) The selection of the design or location; and
- (6) The property will be incorporated into a Federal-aid project.
- (7) The original project agreement covering the project was executed on or after June 9, 1998.

(c) *Reimbursement.* In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires the STD to demonstrate that:

- (1) Prior to acquisition, the STD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and
- (2) The STD obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b)(5) of this section regarding the NEPA process.

**§ 710.503 Protective buying and hardship acquisition.**

(a) *General conditions.* Prior to the STD obtaining final environmental approval, the STD may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

- (1) The project is included in the currently approved STIP;
- (2) The STD has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;
- (3) A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and
- (4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

(b) *Protective buying.* The STD must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

(c) *Hardship acquisitions.* The STD must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:

(1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and

(2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

(d) *Environmental decisions.* Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

**§ 710.505 Real property donations.**

(a) *Donations of property being acquired.* A non-governmental owner whose real property is required for a Federal-aid project may donate the property to the STD. Prior to accepting the property, the owner must be informed by the agency of his/her right to receive just compensation for the property. The owner shall also be informed of his/her right to an appraisal of the property by a qualified appraiser, unless the STD determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than \$2500, or the State appraisal waiver limit approved by the FHWA, whichever is greater. All donations of property received prior to the approval of the NEPA document must meet environmental requirements as specified in 23 U.S.C. 323(d).

(b) *Credit for donations.* Donations of real property may be credited to the State's matching share of the project. Credit to the State's matching share for donated property shall be based on fair market value established on the earlier of the following: either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. Donations may be made at anytime during the development of a project. The STD shall develop sufficient documentation to indicate compliance with paragraph (a) of this section and to support the amount of credit applied. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

(c) *Donations and conveyances in exchange for construction features or services.* A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the State's share of project costs.

**§ 710.507 State and local contributions.**

(a) *General.* Real property owned by State and local governments incorporated within a federally funded project can be used as a credit toward the State matching share of total project cost. A credit cannot exceed the State's matching share required by the project agreement.

(b) *Effective date.* Credits can be applied to projects where the initial project agreement is executed after June 9, 1998.

(c) *Exemptions.* Credits are not available for lands acquired with any form of Federal financial assistance, or for lands already incorporated and used for transportation purposes.

(d) *State contributions.* Real property acquired with State funds and required for federally-assisted projects may support a credit toward the non-Federal share of project costs. The STD must prepare documentation supporting all credits including:

- (1) A certification that the acquisition satisfied the conditions in 23 CFR 710.501(b); and
- (2) Justification of the value of credit applied. Acquisition costs incurred by the State to acquire title can be used as justification for the value of the real property.

(e) *Credit for local government contributions.* A contribution by a unit of local government of real property which is offered for credit, in connection with a project eligible for assistance under this title, shall be credited against the State share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought. The STD shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(b), and that documentation justifies the amount of the credit.

**§ 710.509 Functional replacement of real property in public ownership.**

(a) *General.* When publicly owned real property, including land and/or facilities, is to be acquired for a Federal-aid highway project, in lieu of paying the fair market value for the real property, the State may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility.

(b) *Federal participation.* Federal-aid funds may participate in functional replacement costs only if:

- (1) Functional replacement is permitted under State law and the STD elects to provide it.
- (2) The property in question is in public ownership and use.
- (3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility.
- (4) The State has informed the agency owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.
- (5) The FHWA concurs in the STD determination that functional replacement is in the public interest.
- (6) The real property is not owned by a utility or railroad.

(c) *Federal land transfers.* Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

(d) *Limits upon participation.* Federal-aid participation in the costs of functional replacement are limited to costs which are actually incurred in the replacement of the acquired land and/or facility and are:

(1) Costs for facilities which do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) *Procedures.* When a State determines that payments providing for functional replacement of public facilities are allowable under State law, the State will incorporate within the State's ROW operating manual full procedures covering review and oversight that will be applied to such cases.

#### **§ 710.511 Transportation enhancements.**

(a) *General.* Section 133(b) (8) of title 23 of the United States Code authorizes the expenditure of surface transportation funds for transportation enhancement activities (TEA). Transportation enhancement activities which involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the Code of Federal Regulations (CFR), except as specified in paragraph (b)(3) of this section.

(b) *Requirements.* (1) Displacements for TEA are subject to the Uniform Act.

(2) Acquisitions for TEA are subject to the Uniform Act except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) Entities acquiring real property for TEA who lack the power of eminent domain may comply with the Uniform Act by meeting the limited requirements under 49 CFR 24.101(a)(2).

(4) The requirements of the Uniform Act do not apply when real property acquired for a TEA was purchased from a third party by a qualified conservation organization, and—

(i) The conservation organization is not acting on behalf of the agency receiving TEA or other Federal-aid funds, and

(ii) There was no Federal approval of property acquisition prior to the involvement of the conservation organization. ["Federal approval of property acquisition" means the date of the approval of the environmental document or project authorization/agreement, whichever is earlier. "Involvement of the conservation organization" means the date the organization makes a legally binding offer to acquire a real property interest, including an option to purchase, in the property.]

(5) When a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds on behalf of an agency with eminent domain authority, the requirements of the Uniform Act apply as if the agency had acquired the property itself.

(6) When, subsequent to Federal approval of property acquisition, a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(a)(2) apply.

(c) *Property management.* Real property acquired with TEA funds shall be managed in accordance with the property management requirements provided in subpart D of this part. Any use of the property for purposes other than that for which the TEA funds were provided must be consistent with the continuation of the original use. When the original use of the real property is converted by sale or lease to another use inconsistent with the original use, the STD shall assure that the fair market value or rent is charged and the proceeds reapplied to projects eligible under title 23 of the United States Code.

#### **§ 710.513 Environmental mitigation.**

(a) The acquisition and maintenance of land for wetlands mitigation, wetlands banking, natural habitat, or other appropriate environmental mitigation is an eligible cost under the Federal-aid program. FHWA participation in wetland mitigation sites and other mitigation banks is governed by 23 CFR part 777.

(b) Environmental acquisitions or displacements by both public agencies and private parties are covered by the Uniform Act when they are the result of a program or project undertaken by a Federal agency or one that receives Federal financial assistance. This includes real property acquired for a wetland bank, or other environmentally related purpose, if it is to be used to mitigate impacts created by a Federal-aid highway project.

### **Subpart F—Federal Assistance Programs**

#### **§ 710.601 Federal land transfer.**

(a) The provisions of this subpart apply to any project undertaken with funds for the National Highway System. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal-aid under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510, 104 Stat. 1808, as amended).

(b) Sections 107(d) and 317 of title 23, of the United States Code provide for the transfer of lands or interests in lands owned by the United States to an STD or its nominee for highway purposes.

(c) The STD may file an application with the FHWA, or can make application directly to the land-owning agency if the land-owning agency has its own authority for granting interests in land.

(d) Applications under this section shall include the following information:

- (1) The purpose for which the lands are to be used;
- (2) The estate or interest in the land required for the project;
- (3) The Federal-aid project number or other appropriate references;
- (4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;
- (5) A map showing the survey of the lands to be acquired;
- (6) A legal description of the lands desired; and
- (7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The land-owning agency shall have a period of four months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the four-month reply period at the timely request of the land-owning agency for good cause.

(f) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the STD and certified by an attorney licensed within the State as being legally sufficient. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). After the STD prepares the deed, it will submit the proposed deed with the certification to the FHWA for review and execution.

(g) Following execution, the STD shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.

(h) When the need for the interest acquired under this subpart no longer exists, the STD must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.

#### **§ 710.603 Direct Federal acquisition.**

(a) The provisions of this section apply to any land and or improvements needed in connection with any project on the Interstate System, defense access roads, public lands highways, park roads, parkways, Indian reservation roads, and projects performed by the FHWA in cooperation with Federal and State agencies. For projects on the Interstate System and defense access roads, the provisions of this part are applicable only where the State is unable to acquire the required right-of-way or is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary finding to proceed with the acquisition of the rights-of-way, the STDs written application for Federal acquisition shall include:

- (1) Justification for the Federal acquisition of the lands or interests in lands;
- (2) The date the FHWA authorized the STD to commence right-of-way acquisition, the date of the project agreement and a statement that the agreement contains the provisions required by 25 U.S.C. 111;
- (3) The necessity for acquisition of the particular lands under request;
- (4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;
- (5) The STDs intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;
- (6) A statement on compliance with the provisions of part 771 of this chapter;
- (7) Adequate legal descriptions, plats, appraisals, and title data;
- (8) An outline of the negotiations which have been conducted by the STD with landowners;
- (9) An agreement that the STD will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire rights-of-way; and
- (10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, *et seq.*)

(c) If the landowner tenders a right-of-entry or other right of possession document required by State law any time before the FHWA makes a determination that the STD is unable to acquire the rights-of-way with sufficient promptness, the STD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the STD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (*ex parte*) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the STD to take over supervision of the property. The authorization shall include, but need not be limited to, the following:

- (1) The right to take possession of unoccupied properties;
  - (2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;
  - (3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;
  - (4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;
  - (5) The right to clear improvements and other obstructions;
  - (6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;
  - (7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and
  - (8) Instructions that the authority granted to the STD is not intended to preclude the U.S. Attorney from taking action, before the STD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.
- (f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.
- (g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

- (1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;
- (2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(h) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the STD, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may set forth in the deed; and

(5) Notify the FHWA at the appropriate time that all the conditions have been performed by the State.

(i) The deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

## 49 CFR PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

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**Authority:** 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

**Source:** 70 FR 611, Jan. 4, 2005, unless otherwise noted.

#### **Subpart A—General**

##### **§ 24.1 Purpose.**

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (Uniform Act), in accordance with the following objectives:

- (a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;
- (b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole;

and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

#### **§ 24.2 Definitions and acronyms.**

(a) *Definitions.* Unless otherwise noted, the following terms used in this part shall be understood as defined in this section:

(1) *Agency.* The term *Agency* means the Federal Agency, State, State Agency, or person that acquires real property or displaces a person.

(i) *Acquiring Agency.* The term *acquiring Agency* means a State Agency, as defined in paragraph (a)(1)(iv) of this section, which has the authority to acquire property by eminent domain under State law, and a State Agency or person which does not have such authority.

(ii) *Displacing Agency.* The term *displacing Agency* means any Federal Agency carrying out a program or project, and any State, State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(iii) *Federal Agency.* The term *Federal Agency* means any department, Agency, or instrumentality in the executive branch of the government, any wholly owned government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(iv) *State Agency.* The term *State Agency* means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(2) *Alien not lawfully present in the United States.* The phrase “alien not lawfully present in the United States” means an alien who is not “lawfully present” in the United States as defined in 8 CFR 103.12 and includes:

(i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and whose stay in the United States has not been authorized by the United States Attorney General; and,

(ii) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

(3) *Appraisal.* The term *appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(4) *Business.* The term *business* means any lawful activity, except a farm operation, that is

conducted:

(i) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;

(ii) Primarily for the sale of services to the public;

(iii) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(iv) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(5) *Citizen*. The term *citizen* for purposes of this part includes both citizens of the United States and noncitizen nationals.

(6) *Comparable replacement dwelling*. The term *comparable replacement dwelling* means a dwelling which is:

(i) Decent, safe and sanitary as described in paragraph 24.2(a)(8) of this section;

(ii) Functionally equivalent to the displacement dwelling. The term *functionally equivalent* means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling (See appendix A, §24.2(a)(6));

(iii) Adequate in size to accommodate the occupants;

(iv) In an area not subject to unreasonable adverse environmental conditions;

(v) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(vi) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also §24.403(a)(2));

(vii) Currently available to the displaced person on the private market except as provided in paragraph (a)(6)(ix) of this section (See appendix A, §24.2(a)(6)(vii)); and

(viii) Within the financial means of the displaced person:

(A) A replacement dwelling purchased by a homeowner in occupancy at the displacement

dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in §24.401(c), all increased mortgage interest costs as described at §24.401(d) and all incidental expenses as described at §24.401(e), plus any additional amount required to be paid under §24.404, Replacement housing of last resort.

(B) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at §24.402(b)(2).

(C) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in §24.402(b)(2). Such rental assistance must be paid under §24.404, Replacement housing of last resort.

(ix) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply. (See appendix A, §24.2(a)(6)(ix).)

(7) *Contribute materially.* The term *contribute materially* means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(i) Had average annual gross receipts of at least \$5,000; or

(ii) Had average annual net earnings of at least \$1,000; or

(iii) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(iv) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(8) *Decent, safe, and sanitary dwelling.* The term *decent, safe, and sanitary dwelling* means a dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for good cause by the Federal Agency funding the project. The dwelling shall:

(i) Be structurally sound, weather tight, and in good repair;

(ii) Contain a safe electrical wiring system adequate for lighting and other devices;

(iii) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;

(iv) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the displacing Agency. In addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such Agencies;

(v) There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;

(vi) Contains unobstructed egress to safe, open space at ground level; and

(vii) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (See appendix A, §24.2(a)(8)(vii).)

(9) *Displaced person.* (i) *General.* The term *displaced person* means, except as provided in paragraph (a)(9)(ii) of this section, any person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at §24.401(a) and §24.402(a)):

(A) As a direct result of a written notice of intent to acquire (see §24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;

(B) As a direct result of rehabilitation or demolition for a project; or

(C) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under §24.205(c), and moving expenses under §24.301, §24.302 or §24.303.

(ii) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(A) A person who moves before the initiation of negotiations (see §24.403(d)), unless the Agency determines that the person was displaced as a direct result of the program or project;

(B) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(C) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(D) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal Agency funding the project (See appendix A, §24.2(a)(9)(ii)(D));

(E) An owner-occupant who moves as a result of an acquisition of real property as described in §§24.101(a)(2) or 24.101(b)(1) or (2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.);

(F) A person whom the Agency determines is not displaced as a direct result of a partial acquisition;

(G) A person who, after receiving a notice of relocation eligibility (described at §24.203(b)), is notified in writing that he or she will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(H) An owner-occupant who conveys his or her property, as described in §§24.101(a)(2) or 24.101(b)(1) or (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;

(I) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;

(J) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Pub. L. 93–477, Appropriations for National Park System, or Pub. L. 93–303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;

(K) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided for in §24.206. However, advisory assistance may be provided to unlawful occupants at the option of the Agency in order to facilitate the project;

(L) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with §24.208; or

(M) Tenants required to move as a result of the sale of their dwelling to a person using downpayment assistance provided under the American Dream Downpayment Initiative (ADDI) authorized by section 102 of the American Dream Downpayment Act (Pub. L. 108–186; codified at 42 U.S.C. 12821).

(10) *Dwelling*. The term *dwelling* means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential

unit.

(11) *Dwelling site*. The term *dwelling site* means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area. (See appendix A, §24.2(a)(11).)

(12) *Farm operation*. The term *farm operation* means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(13) *Federal financial assistance*. The term *Federal financial assistance* means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(14) *Household income*. The term *household income* means total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age. (See appendix A, §24.2(a)(14) for examples of exclusions to income.)

(15) *Initiation of negotiations*. Unless a different action is specified in applicable Federal program regulations, the term *initiation of negotiations* means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal Agency or State Agency, the *initiation of negotiations* means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal Agency or State Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the *initiation of negotiations* means the actual move of the person from the property.

(ii) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal Agency or a State Agency), the *initiation of negotiations* means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(iii) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96–510, or Superfund) (CERCLA) the *initiation of negotiations* means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(iv) In the case of permanent relocation of a tenant as a result of an acquisition of real property described in §24.101(b)(1) through (5), the initiation of negotiations means the actions described in §24.2(a)(15)(i) and (ii), except that such initiation of negotiations does not become effective, for purposes of establishing eligibility for relocation assistance for such tenants under this part,

until there is a written agreement between the Agency and the owner to purchase the real property. (See appendix A, §24.2(a)(15)(iv)).

(16) *Lead Agency*. The term *Lead Agency* means the Department of Transportation acting through the Federal Highway Administration.

(17) *Mobile home*. The term *mobile home* includes manufactured homes and recreational vehicles used as residences. (See appendix A, §24.2(a)(17)).

(18) *Mortgage*. The term *mortgage* means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(19) *Nonprofit organization*. The term *nonprofit organization* means an organization that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(20) *Owner of a dwelling*. The term *owner of a dwelling* means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(i) Fee title, a life estate, a land contract, a 99 year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(iii) A contract to purchase any of the interests or estates described in §24.2(a)(1)(i) or (ii) of this section; or

(iv) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(21) *Person*. The term *person* means any individual, family, partnership, corporation, or association.

(22) *Program or project*. The phrase *program or project* means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

(23) *Salvage value*. The term *salvage value* means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

(24) *Small business*. A *small business* is a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of §24.304.

(25) *State*. Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

(26) *Tenant*. The term *tenant* means a person who has the temporary use and occupancy of real property owned by another.

(27) *Uneconomic remnant*. The term *uneconomic remnant* means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined has little or no value or utility to the owner.

(28) *Uniform Act*. The term *Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894; 42 U.S.C. 4601 *et seq.*), and amendments thereto.

(29) *Unlawful occupant*. A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law. An Agency, at its discretion, may consider such person to be in lawful occupancy.

(30) *Utility costs*. The term *utility costs* means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

(31) *Utility facility*. The term *utility facility* means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(32) *Utility relocation*. The term *utility relocation* means the adjustment of a utility facility required by the program or project undertaken by the displacing Agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

(33) *Waiver valuation*. The term *waiver valuation* means the valuation process used and the product produced when the Agency determines that an appraisal is not required, pursuant to §24.102(c)(2) appraisal waiver provisions.

(b) *Acronyms*. The following acronyms are commonly used in the implementation of programs subject to this regulation:

(1) BCIS. Bureau of Citizenship and Immigration Service.

(2) FEMA. Federal Emergency Management Agency.

(3) FHA. Federal Housing Administration.

- (4) FHWA. Federal Highway Administration.
- (5) FIRREA. Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- (6) HLR. Housing of last resort.
- (7) HUD. U.S. Department of Housing and Urban Development.
- (8) MIDP. Mortgage interest differential payment.
- (9) RHP. Replacement housing payment.
- (10) STURAA. Surface Transportation and Uniform Relocation Act Amendments of 1987.
- (11) URA. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- (12) USDOT. U.S. Department of Transportation.
- (13) USPAP. Uniform Standards of Professional Appraisal Practice.

**§ 24.3 No duplication of payments.**

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the Agency to have the same purpose and effect as such payment under this part. (See appendix A, §24.3).

**§ 24.4 Assurances, monitoring and corrective action.**

(a) *Assurances.* (1) Before a Federal Agency may approve any grant to, or contract, or agreement with, a State Agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State Agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing Agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring Agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to §§301 or 302 of the Uniform Act. If, in the judgment of the Federal Agency, Uniform Act compliance will be served, a State Agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency, which both acquires real property and displaces persons, may combine its section 210 and section 305 assurances in one document.

(2) If a Federal Agency or State Agency provides Federal financial assistance to a "person" causing displacement, such Federal or State Agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal Agency may provide Federal financial assistance to a State Agency after it has accepted a certification by such State Agency in accordance with the requirements in subpart G

of this part.

(b) *Monitoring and corrective action.* The Federal Agency will monitor compliance with this part, and the State Agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal Agency may also apply sanctions in accordance with applicable program regulations. (Also see §24.603, of this part).

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

#### **§ 24.5 Manner of notices.**

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at §24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

#### **§ 24.6 Administration of jointly-funded projects.**

Whenever two or more Federal Agencies provide financial assistance to an Agency or Agencies, other than a Federal Agency, to carry out functionally or geographically related activities, which will result in the acquisition of property or the displacement of a person, the Federal Agencies may by agreement designate one such Agency as the cognizant Federal Agency. In the unlikely event that agreement among the Agencies cannot be reached as to which Agency shall be the cognizant Federal Agency, then the Lead Agency shall designate one of such Agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally-assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal Agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally-assisted activities under the agreement shall be deemed a project for the purposes of this part.

#### **§ 24.7 Federal Agency waiver of regulations.**

The Federal Agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

#### **§ 24.8 Compliance with other laws and regulations.**

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

- (a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).
- (b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).
- (c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.
- (d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
- (e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).
- (f) The Flood Disaster Protection Act of 1973 (Pub. L. 93–234).
- (g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).
- (h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892.
- (i) Executive Order 11246—Equal Employment Opportunity, as amended.
- (j) Executive Order 11625—Minority Business Enterprise.
- (k) Executive Orders 11988—Floodplain Management, and 11990—Protection of Wetlands.
- (l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.
- (m) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.
- (n) Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).
- (o) Executive Order 12892—Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994).

**§ 24.9 Recordkeeping and reports.**

- (a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.
- (b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.
- (c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal Agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding Agency shows good cause. The report shall be prepared and submitted using the format contained in appendix B of this part.

**§ 24.10 Appeals.**

- (a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.
- (b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under §24.106 or §24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.
- (c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.
- (d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.
- (e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.
- (f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.
- (g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review of the Agency decision.
- (h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

**Subpart B—Real Property Acquisition****§ 24.101 Applicability of acquisition requirements.****(a) Direct Federal program or project.**

(1) The requirements of this subpart apply to any acquisition of real property for a direct Federal program or project, except acquisition for a program or project that is undertaken by the Tennessee Valley Authority or the Rural Utilities Service. (See appendix A, §24.101(a).)

(2) If a Federal Agency (except for the Tennessee Valley Authority or the Rural Utilities Service) will not acquire a property because negotiations fail to result in an agreement, the owner of the property shall be so informed in writing. Owners of such properties are not displaced persons, (see §§24.2(a)(9)(ii)(E) or (H)), and as such, are not entitled to relocation assistance benefits. However, tenants on such properties may be eligible for relocation assistance benefits. (See §24.2(a)(9)).

(b) *Programs and projects receiving Federal financial assistance.* The requirements of this subpart apply to any acquisition of real property for programs and projects where there is Federal financial assistance in any part of project costs except for the acquisitions described in paragraphs (b)(1) through (5) of this section. The relocation assistance provisions in this part are applicable to any tenants that must move as a result of an acquisition described in paragraphs (b)(1) through (5) of this section. Such tenants are considered displaced persons. (See §24.2(a)(9).)

(1) The requirements of Subpart B do not apply to acquisitions that meet all of the following conditions in paragraphs (b)(1)(i) through (iv):

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (See appendix A, §24.101(b)(1)(i).)

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner in writing of what it believes to be the market value of the property. (See appendix A, §24.101(b)(1)(iv) and (2)(ii).)

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and

(ii) Inform the owner in writing of what it believes to be the market value of the property. (See appendix A, §24.101(b)(1)(iv) and (2)(ii).)

(3) The acquisition of real property from a Federal Agency, State, or State Agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is

needed by the cooperative.

(5) Acquisition for a program or project that receives Federal financial assistance from the Tennessee Valley Authority or the Rural Utilities Service.

(c) *Less-than-full-fee interest in real property.*

(1) The provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent and/or temporary easements necessary for the project. However, the Agency may apply these regulations to any less-than-full-fee acquisition that, in its judgment, should be covered.

(2) The provisions of this subpart do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.

(d) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See §24.4(a).)

#### **§ 24.102 Basic acquisition policies.**

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (See §24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.*

(1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in §24.102 (c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the Agency from its obligation to appraise the property; or

(ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.

(A) When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation.

(B) The person performing the waiver valuation must have sufficient understanding of the local

real estate market to be qualified to make the waiver valuation.

(C) The Federal Agency funding the project may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph. (See appendix A, §24.102(c)(2).)

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation. (See §24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. (See appendix A, §24.102(d).)

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) *Basic negotiation procedures.* The Agency shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with §24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation. (See appendix A, §24.102(f).)

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (See appendix A, §24.102(i).)

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (See appendix A, §24.102(j).)

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See §24.2(a)(27).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy. (See appendix A, §24.102(m).)

(n) *Conflict of interest.*

(1) The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Agency.

Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

(2) No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Agency.

(3) An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal

review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less. (See appendix A, §24.102(n).)

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

**§ 24.103 Criteria for appraisals.**

(a) *Appraisal requirements.* This section sets forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). <sup>1</sup> (See appendix A, §24.103(a).) The Agency may have appraisal requirements that supplement these requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). <sup>2</sup>

(1) The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem.

<sup>1</sup> Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation at the following URL: <http://www.appraisalfoundation.org/htm/USPAP2004/toc.htm>.

<sup>2</sup> The "Uniform Appraisal Standards for Federal Land Acquisitions" is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at <http://www.usdoj.gov/enrd/land-ack/toc.htm> or in soft cover format from the Appraisal Institute at <http://www.appraisalinstitute.org/econom/publications/Default.asp> and select "Legal/Regulatory" or call 888-570-4545.

(2) The Agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in §24.2(a)(3) and the five following requirements: (See appendix A, §§24.103 and 24.103(a).)

(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (See appendix A, §24.103(a)(1).)

(ii) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. (See appendix A, §24.103(a).)

(iii) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (See appendix A, §24.103(b).)

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at §24.2(a)(24)) of the retained improvement.

(d) *Qualifications of appraisers and review appraisers.*

(1) The Agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The Agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the Agency to be qualified. (See appendix A, §24.103(d)(1).)

(2) If the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.*).

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

#### **§ 24.104 Review of appraisals.**

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified review appraiser (see §24.103(d)(1) and appendix A, §24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103 and other applicable requirements, including, to the extent appropriate, the UASFLA, and support the appraiser's opinion of value. The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted. If authorized by the Agency to do so, the staff review appraiser shall also approve the appraisal (as the basis for the establishment of the amount believed to be just

compensation), and, if also authorized to do so, develop and report the amount believed to be just compensation. (See appendix A, §24.104(a).)

(b) If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring Agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with §24.103 to support a recommended (or approved) value. (See appendix A, §24.104(b).)

(c) The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. (See appendix A, §24.104(c).)

#### **§ 24.105 Acquisition of tenant-owned improvements.**

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart.

(c) *Appraisal and Establishment of Just Compensation for a Tenant-Owned Improvement.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater. (Salvage value is defined at §24.2(a)(23).)

(d) *Special conditions for tenant-owned improvements.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property

interests in accordance with other applicable law.

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

**§ 24.106 Expenses incidental to transfer of title to the Agency.**

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

**§ 24.107 Certain litigation expenses.**

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation;

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

**§ 24.108 Donations.**

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine. The Agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in §24.102(c)(2).

**Subpart C—General Relocation Requirements**

**§ 24.201 Purpose.**

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

**§ 24.202 Applicability.**

These requirements apply to the relocation of any displaced person as defined at §24.2(a)(9). Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and this regulation. (See appendix A, §24.202.)

**§ 24.203 Relocation notices.**

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing Agency's relocation program which does at least the following:

- (1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);
- (2) Informs the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;
- (3) Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;
- (4) Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in §24.208(h); and
- (5) Describes the displaced person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of a notice of intent to acquire (described in §24.203(d)), the initiation of negotiations (defined in §24.2(a)(15)), or actual acquisition, whichever occurs first. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice.* (1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See §24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

(d) *Notice of intent to acquire.* A notice of intent to acquire is a displacing Agency's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Agency intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance. (See §24.2(a)(9)(i)(A).)

**§ 24.204 Availability of comparable replacement dwelling before displacement.**

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at §24.2 (a)(6)) has been made available to the person. When possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location;

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal Agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

**§ 24.205 Relocation planning, advisory services, and coordination.**

(a) *Relocation planning.* During the early stages of development, an Agency shall plan Federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the Agency should consider housing of last resort actions.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are

reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(5) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.

(c) *Relocation assistance advisory services.* (1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offer the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine, for nonresidential (businesses, farm and nonprofit organizations) displacements, the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(B) Determination of the need for outside specialists in accordance with §24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(C) For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.

(D) An estimate of the time required for the business to vacate the site.

(E) An estimate of the anticipated difficulty in locating a replacement property.

(F) An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.

(ii) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person.

(A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in §24.204(a).

(B) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see §24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See §24.2(a)(8).) If such an inspection is not made, the Agency shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(D) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See appendix A, §24.205(c)(2)(ii)(D).)

(E) The Agency shall offer all persons transportation to inspect housing to which they are referred.

(F) Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (see §24.2(a)(6)(ix)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

(iii) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons,

and technical help to persons applying for such assistance.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (See §24.6.)

(e) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

#### **§ 24.206 Eviction for cause.**

(a) Eviction for cause must conform to applicable State and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(1) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(2) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

(b) For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project. (See appendix A, §24.206.)

#### **§ 24.207 General requirements—claims for relocation payments.**

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advanced payments.* If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the Agency no later

than 18 months after:

(i) For tenants, the date of displacement.

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) The Agency shall waive this time period for good cause.

(e) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(f) *No waiver of relocation assistance.* A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

(g) *Expenditure of payments.* Payments, provided pursuant to this part, shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

**§ 24.208 Aliens not lawfully present in the United States.**

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and (a)(3) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding Agency and, within those parameters, that of the displacing Agency.

(c) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be

ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

(d) The displacing Agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the displacing Agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of an alien's documentation or other information that the Agency considers reliable and appropriate.

(e) Any review by the displacing Agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each displacing Agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of an alien's documentation or other credible evidence, a displacing Agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:

(1) If the Agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing Agency shall obtain verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. A list of local BCIS offices is available at <http://www.uscis.gov/graphics/fieldoffices/alphaa.htm>. Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. (If an Agency is unable to contact the BCIS, it may contact the FHWA in Washington, DC, Office of Real Estate Services or Office of Chief Counsel for a referral to the BCIS.)

(2) If the Agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing Agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(g) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing Agency's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

(h) For purposes of paragraph (g) of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result

in:

- (1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;
  - (2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or
  - (3) Any other impact that the displacing Agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.
- (i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in §24.207 of this part.

(Approved by the Office of Management and Budget under control number 2105–0508.)

**§ 24.209 Relocation payments not considered as income.**

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (Title 26, U.S. Code), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S. Code 301 *et seq.*) or any other Federal law, except for any Federal law providing low-income housing assistance.

**Subpart D—Payments for Moving and Related Expenses**

**§ 24.301 Payment for actual reasonable moving and related expenses.**

- (a) *General.* (1) Any owner-occupant or tenant who qualifies as a displaced person (defined at §24.2(a)(9)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary.
- (2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under §24.301 to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at §24.502(a)(3), the home-owner occupant is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.
- (b) *Moves from a dwelling.* A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods: (Eligible expenses for moves from a dwelling include the expenses described in paragraphs (g)(1) through (g)(7) of this section. Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.)
- (1) *Commercial move*—moves performed by a professional mover.

(2) *Self-move*—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule*. (Described in §24.302.)

(ii) *Actual cost move*. Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(c) *Moves from a mobile home*. A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods: (self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section. Eligible expenses for moves from a mobile home include those expenses described in paragraphs (g)(1) through (g)(7) of this section. In addition to the items in paragraph (a) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs (g)(8) through (g)(10) of this section.)

(1) *Commercial move*—moves performed by a professional mover.

(2) *Self-move*—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule*. (Described in §24.302.)

(ii) *Actual cost move*. Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(d) *Moves from a business, farm or nonprofit organization*. Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one or a combination of the following methods: (Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in paragraphs (g)(1) through (g)(7) of this section and paragraphs (g)(11) through (g)(18) of this section and §24.303.)

(1) *Commercial move*. Based on the lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(2) *Self-move*. A self-move payment may be based on one or a combination of the following:

(i) The lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(ii) Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost

paid by a commercial mover.

(e) *Personal property only.* Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include those expenses described in paragraphs (g)(1) through (g)(7) and (g)(18) of this section. (See appendix A, §24.301(e).)

(f) *Advertising signs.* The amount of a payment for direct loss of an advertising sign, which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

(g) *Eligible actual moving expenses.*

(1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the property in connection with the move and necessary storage.

(6) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(7) Other moving-related expenses that are not listed as ineligible under §24.301(h), as the Agency determines to be reasonable and necessary.

(8) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility “hookup” charges.

(9) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(10) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

(11) Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

(12) Professional services as the Agency determines to be actual, reasonable and necessary for:

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(13) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(14) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling prices.); or

(ii) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. (See appendix A, §24.301(g)(14)(i) and (ii).) If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.

(15) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(16) *Purchase of substitute personal property.* If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(17) Searching for a replacement location. A business or farm operation is entitled to

reimbursement for actual expenses, not to exceed \$2,500, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

- (i) Transportation;
- (ii) Meals and lodging away from home;
- (iii) Time spent searching, based on reasonable salary or earnings;
- (iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;
- (v) Time spent in obtaining permits and attending zoning hearings; and
- (vi) Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

(18) *Low value/high bulk.* When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Agency.

(h) *Ineligible moving and related expenses.* A displaced person is not entitled to payment for:

- (1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this part does not preclude the computation under §24.401(c)(2)(iii));
- (2) Interest on a loan to cover moving expenses;
- (3) Loss of goodwill;
- (4) Loss of profits;
- (5) Loss of trained employees;
- (6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in §24.304(a)(6);
- (7) Personal injury;
- (8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency;
- (9) Expenses for searching for a replacement dwelling;
- (10) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§24.301(g)(3) and 24.304(a);

(11) Costs for storage of personal property on real property already owned or leased by the displaced person, and

(12) Refundable security and utility deposits.

(i) *Notification and inspection (nonresidential)*. The Agency shall inform the displaced person, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in §24.203. To be eligible for payments under this section the displaced person must:

(1) Provide the Agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(2) Permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(j) *Transfer of ownership (nonresidential)*. Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

#### **§ 24.302 Fixed payment for moving expenses—residential moves.**

Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under §24.301. This payment shall be determined according to the Fixed Residential Moving Cost Schedule<sup>3</sup> approved by the Federal Highway Administration and published in the Federal Register on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an Agency at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule.

<sup>3</sup> The Fixed Residential Moving Cost Schedule is available at the following URL:  
<http://www.fhwa.dot.gov/realstate/fixsch96.htm>. Agencies are cautioned to ensure they are using the most recent edition.

#### **§ 24.303 Related nonresidential eligible expenses.**

The following expenses, in addition to those provided by §24.301 for moving personal property, shall be provided if the Agency determines that they are actual, reasonable and necessary:

(a) Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

(b) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related

to the purchase or lease of such site). At the discretion of the Agency a reasonable pre-approved hourly rate may be established. (See appendix A, §24.303(b).)

(c) Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Agency.

**§ 24.304 Reestablishment expenses—nonresidential moves.**

In addition to the payments available under §§24.301 and 24.303 of this subpart, a small business, as defined in §24.2(a)(24), farm or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

- (1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
- (2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
- (3) Construction and installation costs for exterior signing to advertise the business.
- (4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
- (5) Advertisement of replacement location.
- (6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:
  - (i) Lease or rental charges;
  - (ii) Personal or real property taxes;
  - (iii) Insurance premiums; and
  - (iv) Utility charges, excluding impact fees.
- (7) Other items that the Agency considers essential to the reestablishment of the business.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

- (1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.
- (2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interest on money borrowed to make the move or purchase the replacement property.

(4) Payment to a part-time business in the home which does not contribute materially (defined at §24.2(a)(7)) to the household income.

**§ 24.305 Fixed payment for moving expenses—nonresidential moves.**

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§24.301, 24.303 and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site;

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage;

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (See §24.2(a)(7).)

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at §24.2(a)(12)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See appendix A, §24.305(d).)

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence, which the Agency determines is satisfactory. (See appendix A, §24.305(e).)

#### **§ 24.306 Discretionary utility relocation payments.**

(a) Whenever a program or project undertaken by a displacing Agency causes the relocation of a utility facility (see §24.2(a)(31)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing Agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way;

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement;

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing Agency;

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing Agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing Agency is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of the displacing Agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally-assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing Agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See appendix A, §24.306.)

#### **Subpart E—Replacement Housing Payments**

##### **§ 24.401 Replacement housing payment for 180-day homeowner-occupants.**

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

(ii) The date the displacing Agency's obligation under §24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also §24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one

year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

- (1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section;
- (2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and
- (3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential.* (1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling and site (see §24.2(a)(11)) to provide a total amount equal to the lesser of:

- (i) The reasonable cost of a comparable replacement dwelling as determined in accordance with §24.403(a); or
- (ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

- (i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;
- (ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at §24.2(a)(8)); and
- (iii) The current fair market value for residential use of the replacement dwelling site (see appendix A, §24.401(c)(2)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
- (iv) The retention value of the dwelling, if such retention value is reflected in the “acquisition cost” used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement

dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d)(1) through (d)(5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (See appendix A, §24.401(d).) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or §24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Professional home inspection, certification of structural soundness, and termite inspection.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determine to be incidental to the purchase.

(f) Rental assistance payment for 180-day homeowner. A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with §24.402(b)(1), except that the limit of \$5,250 does not apply, and disbursed in accordance with §24.402(b)(3). Under no circumstances would the rental assistance payment exceed the amount that could have been received under §24.401(b)(1) had the 180-day homeowner elected to purchase and occupy a comparable replacement dwelling.

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

**§ 24.402 Replacement housing payment for 90-day occupants.**

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling; or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.* (1) *Amount of payment.* An eligible displaced person who rents a

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replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See §24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances);

(ii) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs<sup>4</sup>. The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or,

<sup>4</sup> The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on FHWA's Web site at <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>.

(iii) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by §24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment—(1) Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the Agency's discretion, a downpayment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under §24.401(b) if he or she met the 180-day occupancy requirement. If the Agency elects to provide the maximum payment of \$5,250 as a downpayment, the Agency shall apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like

circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under §24.401(a) is not eligible for this payment. (See appendix A, §24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

**§ 24.403 Additional rules governing replacement housing payments.**

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at §24.2(a)(6)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(5) Multiple occupants of one displacement dwelling. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(6) Deductions from relocation payments. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(7) Mixed-use and multifamily properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment

which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing the initial payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at §24.2(a)(8).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling;
- (2) Purchases and rehabilitates a substandard dwelling;
- (3) Relocates a dwelling which he or she owns or purchases;
- (4) Constructs a dwelling on a site he or she owns or purchases;
- (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
- (6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency; or
- (2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under §24.402(b) is eligible to receive a payment under §24.401 or §24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under §24.401 or §24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

- (1) The amount attributable to the displaced person's period of actual occupancy of the

replacement housing shall be paid.

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(g) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (See §24.3.)

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

**§ 24.404 Replacement housing of last resort.**

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in §24.401 or §24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area;

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person, or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to

accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in §24.401 or §24.402. A replacement housing payment under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing Agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers for persons with disabilities.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see appendix A, §24.404(c)), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with §24.2(a)(6)(ii) of this part.

(3) The Agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means. (See §24.2(a)(6)(viii)(C).) Such assistance shall cover a period of 42 months.

#### **Subpart F—Mobile Homes**

##### **§ 24.501 Applicability.**

(a) *General.* This subpart describes the requirements governing the provision of replacement

housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with subpart D of this part and a replacement housing payment in accordance with subpart E of this part to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in §24.301(g)(1) through (g)(10).

(b) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person who is entitled to relocation payments and other assistance under this part.

**§ 24.502 Replacement housing payment for 180-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.**

(a) *Eligibility.* An owner-occupant displaced from a mobile home or site is entitled to a replacement housing payment, not to exceed \$22,500, under §24.401 if:

(1) The person occupied the mobile home on the displacement site for at least 180 days immediately before:

(i) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;

(ii) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or

(iii) The date of the Agency's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in paragraphs (a)(3)(i) through (iv) of this section.

(2) The person meets the other basic eligibility requirements at §24.401(a)(2); and

(3) The Agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not, and cannot economically be made decent, safe, and sanitary;

(ii) Cannot be relocated without substantial damage or unreasonable cost;

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) *Replacement housing payment computation for a 180-day owner that is displaced from a mobile home.* The replacement housing payment for an eligible displaced 180-day owner is

computed as described at §24.401(b) incorporating the following, as applicable:

(1) If the Agency acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.

(2) If the Agency does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on paragraph (a)(1)(iii) of this section, the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (*i.e.*, purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the Agency's selected comparable mobile home less the Agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

(3) If a comparable replacement mobile home site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(c) *Rental assistance payment for a 180-day owner-occupant that is displaced from a leased or rented mobile home site.* If the displacement mobile home site is leased or rented, a displaced 180-day owner-occupant is entitled to a rental assistance payment computed as described in §24.402(b). This rental assistance payment may be used to lease a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe and sanitary dwelling.

(d) *Owner-occupant not displaced from the mobile home.* If the Agency determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described at §24.301 and any replacement housing payment for the purchase or rental of a comparable site as described in this section or §24.503 as applicable.

**§ 24.503 Replacement housing payment for 90-day mobile home occupants.**

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed \$5,250, under §24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at §24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the Agency determines that the occupant is displaced from the mobile home because of one of the circumstances described at §24.502(a)(3).

**Subpart G—Certification****§ 24.601 Purpose.**

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by §24.4 of this part.

**§ 24.602 Certification application.**

An Agency wishing to proceed on the basis of a certification may request an application for certification from the Lead Agency Director, Office of Real Estate Services, HEPR-1, Federal Highway Administration, 400 Seventh St, SW., Washington, DC 20590. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding Agency, in accordance with application procedures.

**§ 24.603 Monitoring and corrective action.**

(a) The Federal Lead Agency shall, in coordination with other Federal Agencies, monitor from time to time State Agency implementation of programs or projects conducted under the certification process and the State Agency shall make available any information required for this purpose.

(b) The Lead Agency may require periodic information or data from affected Federal or State Agencies.

(c) A Federal Agency may, after consultation with the Lead Agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State Agency fails to comply with its certification or with applicable State law and regulations. The Federal Agency shall initiate consultation with the Lead Agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The Lead Agency will also inform other Federal Agencies, which have accepted a certification under this subpart from the same State Agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the Lead Agency report biennially to the Congress on State Agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the Lead Agency may require periodic information or data from affected Federal or State Agencies.

**Appendix A to Part 24—Additional Information**

This appendix provides additional information to explain the intent of certain provisions of this part.

## Subpart A—General

### *Section 24.2 Definitions and Acronyms*

*Section 24.2(a)(6) Definition of comparable replacement dwelling.* The requirement in §24.2(a)(6)(ii) that a comparable replacement dwelling be “functionally equivalent” to the displacement dwelling means that it must perform the same function, and provide the same utility. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is “adequate to accommodate” the displaced person) may be found to be “functionally equivalent” to a larger but very run-down substandard displacement dwelling. Another example is when a displaced person accepts an offer of government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displacement dwelling.

*Section 24.2(a)(6)(vii).* The definition of comparable replacement dwelling requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

*Section 24.2(a)(6)(ix).* A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. A privately owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing.

A housing program subsidy that is paid to a person (not tied to the building), such as a HUD Section 8 Housing Voucher Program, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing assistance program, the rules of that program governing the size of the dwelling apply, and the rental assistance payment under §24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

*Section 24.2(a)(8)(ii) Decent, Safe and Sanitary.* Many local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored. Even where local law does not mandate adherence to such standards, it is strongly recommended that they be considered as a matter of public policy.

*Section 24.2(a)(8)(vii) Persons with a disability.* Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the Agency is required to address persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The Agency shall also consider other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs.

*Section 24.2(a)(9)(ii)(D) Persons not displaced.* Paragraph (a)(9)(ii)(D) of this section recognizes that there are circumstances where the acquisition, rehabilitation or demolition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation. These expenses may include moving expenses and increased housing costs during the temporary relocation. Temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location. The Agency must contact any residential tenant who has been temporarily relocated for a period beyond one year and offer all permanent relocation assistance. This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance.

Similarly, if a business will be shut-down for any length of time due to rehabilitation of a site, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be displaced at the Agency's option.

Any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with 49 CFR part 24.10 of this regulation.

*Section 24.2(a)(11) Dwelling Site.* This definition ensures that the computation of replacement housing payments are accurate and realistic (a) when the dwelling is located on a larger than normal site, (b) when mixed-use properties are acquired, (c) when more than one dwelling is located on the acquired property, or (d) when the replacement dwelling is retained by an owner and moved to another site.

*Section 24.2(a)(14) Household income (exclusions).* Household income for purposes of this

regulation does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children (WIC) program. For a more detailed list of income exclusions see Federal Highway Administration, Office of Real Estate Services Web site: <http://www.fhwa.dot.gov/realestate/>. (FR 4644–N–16 page 20319 Updated.) If there is a question on whether or not to include income from a specific program contact the Federal Agency administering the program.

*Section 24(a)(15) Initiation of negotiations.* This section provides a special definition for acquisition and displacements under Pub. L. 96–510 or Superfund. The order of activities under Superfund may differ slightly in that temporary relocation may precede acquisition. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert individual owners and tenants to potential health or safety threats and to offer to temporarily relocate them while additional information is gathered. If a decision is later made to permanently relocate such persons, those who had been temporarily relocated under Superfund authority would no longer be on site when a formal, written offer to acquire the property was made, and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition of initiation of negotiation, which is based on the date the Federal Government offers to temporarily relocate an owner or tenant from the subject property.

*Section 24.2(a)(15)(iv) Initiation of negotiations (Tenants.)* Tenants who occupy property that may be acquired amicably, without recourse to the use of the power of eminent domain, must be fully informed as to their eligibility for relocation assistance. This includes notifying such tenants of their potential eligibility when negotiations are initiated, notifying them if they become fully eligible, and, in the event the purchase of the property will not occur, notifying them that they are no longer eligible for relocation benefits. If a tenant is not readily accessible, as the result of a disaster or emergency, the Agency must make a good faith effort to provide these notifications and document its efforts in writing.

*Section 24.2(a)(17) Mobile home.* The following examples provide additional guidance on the types of mobile homes and manufactured housing that can be found acceptable as comparable replacement dwellings for persons displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met: the recreational vehicle is purchased and occupied as the “primary” place of residence; it is located on a purchased or leased site and connected to or have available all necessary utilities for functioning as a housing unit on the date of the displacing Agency’s inspection; and, the dwelling, as sited, meets all local, State, and Federal requirements for a decent, safe and sanitary dwelling. (The regulations of some local jurisdictions will not permit the consideration of these vehicles as decent, safe and sanitary dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

For HUD programs, mobile home is defined as “a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such terms shall include any

structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act, provided by Congress in the original 1974 Manufactured Housing Act.” In 1979 the term “mobile home” was changed to “manufactured home.” For purposes of this regulation, the terms mobile home and manufactured home are synonymous.

When assembled, manufactured homes built after 1976 contain no less than 320 square feet. They may be single or multi-sectioned units when installed. Their designation as personalty or realty will be determined by State law. When determined to be realty, most are eligible for conventional mortgage financing.

The 1976 HUD standards distinguish manufactured homes from factory-built “modular homes” as well as conventional or “stick-built” homes. Both of these types of housing are required to meet State and local construction codes.

*Section 24.3 No Duplication of Payments.* This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment is computed.

#### Subpart B—Real Property Acquisition

Federal Agencies may find that, for Federal eminent domain purposes, the terms “fair market value” (as used throughout this subpart) and “market value,” which may be the more typical term in private transactions, may be synonymous.

*Section 24.101(a) Direct Federal program or project.* All 49 CFR Part 24 Subpart B (real property acquisition) requirements apply to all direct acquisitions for Federal programs and projects by Federal Agencies, except for acquisitions undertaken by the Tennessee Valley Authority or the Rural Utilities Service. There are no exceptions for “voluntary transactions.”

*Section 24.101(b)(1)(i).* The term “general geographic area” is used to clarify that the “geographic area” is not to be construed to be a small, limited area.

*Sections 24.101(b)(1)(iv) and (2)(ii).* These sections provide that, for programs and projects receiving Federal financial assistance described in §§24.101(b)(1) and (2), Agencies are to inform the owner(s) in writing of the Agency's estimate of the fair market value for the property to be acquired.

While this part does not require an appraisal for these transactions, Agencies may still decide that an appraisal is necessary to support their determination of the market value of these properties, and, in any event, Agencies must have some reasonable basis for their determination of market value. In addition, some of the concepts inherent in Federal Program appraisal practice are appropriate for these estimates. It would be appropriate for Agencies to adhere to project influence restrictions, as well as guard against discredited “public interest value” valuation concepts.

After an Agency has established an amount it believes to be the market value of the property and has notified the owner of this amount in writing, an Agency may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations, it would be entirely appropriate for Agencies to apply the administrative settlement concept and procedures in §24.102(i) to negotiate amounts that exceed the original estimate of market value. Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.

*Section 24.101(c) Less-than-full-fee interest in real property.* This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases.

*Section 24.102(c)(2) Appraisal, waiver thereof, and invitation to owner.* The purpose of the appraisal waiver provision is to provide Agencies a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The intent is that non-appraisers make the waiver valuations, freeing appraisers to do more sophisticated work.

The Agency employee making the determination to use the appraisal waiver process must have enough understanding of appraisal principles to be able to determine whether or not the proposed acquisition is low value and uncomplicated.

Waiver valuations are not appraisals as defined by the Uniform Act and these regulations; therefore, appraisal performance requirements or standards, regardless of their source, are not required for waiver valuations by this rule. Since waiver valuations are not appraisals, neither is there a requirement for an appraisal review. However, the Agency must have a reasonable basis for the waiver valuation and an Agency official must still establish an amount believed to be just compensation to offer the property owner(s).

The definition of “appraisal” in the Uniform Act and appraisal waiver provisions of the Uniform Act and these regulations are Federal law and public policy and should be considered as such when determining the impact of appraisal requirements levied by others.

*Section 24.102(d) Establishment of offer of just compensation.* The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

*Section 24.102(f) Basic negotiation procedures.* An offer should be adequately presented to an owner, and the owner should be properly informed. Personal, face-to-face contact should take place, if feasible, but this section does not require such contact in all cases.

This section also provides that the property owner be given a reasonable opportunity to consider the Agency's offer and to present relevant material to the Agency. In order to satisfy this requirement, Agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the

minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

In some jurisdictions, there is pressure to initiate formal eminent domain procedures at the earliest opportunity because completing the eminent domain process, including gaining possession of the needed real property, is very time consuming. These provisions are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations, described above, and the Agencies adhere to the Uniform Act ban on coercive action (section 301(7) of the Uniform Act).

If the owner expresses intent to provide an appraisal report, Agencies are encouraged to provide the owner and/or his/her appraiser a copy of Agency appraisal requirements and inform them that their appraisal should be based on those requirements.

*Section 24.102(i) Administrative settlement.* This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

*Section 24.102(j) Payment before taking possession.* It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

*Section 24.102(m) Fair rental.* Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed “the fair rental value of the property to a short-term occupier.” Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

*Section 24.102(n) Conflict of interest.* The overall objective is to minimize the risk of fraud while allowing Agencies to operate as efficiently as possible. There are three parts to this provision.

The first provision is the prohibition against having any interest in the real property being valued by the appraiser (for an appraisal), the valuer (for a waiver estimate) or the review appraiser (for an appraisal review.)

The second provision is that no person functioning as a negotiator for a project or program can supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work for that project or program. The intent of this provision is to ensure appraisal/valuation independence and to prevent inappropriate influence. It is not intended to prevent Agencies from providing appraisers/valuers with appropriate project information and participating in determining the scope of work for the appraisal or valuation. For

a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it would create a hardship for the Agency. The intent is to accommodate Federal-aid recipients that have a small staff where this provision would be unworkable.

The third provision is to minimize situations where administrative costs exceed acquisition costs. Section 24.102(n) also provides that the same person may prepare a valuation estimate (including an appraisal) and negotiate that acquisition, if the valuation estimate amount is \$10,000 or less. However, it should be noted that this exception for properties valued at \$10,000 or less is not mandatory, *e.g.*, Agencies are not required to use those who prepare a waiver valuation or appraisal of \$10,000 or less to negotiate the acquisition, and, all appraisals must be reviewed in accordance with §24.104. This includes appraisals of real property valued at \$10,000 or less.

*Section 24.103 Criteria for Appraisals.* The term “requirements” is used throughout this section to avoid confusion with The Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) “standards.” Although this section discusses appraisal requirements, the definition of “appraisal” itself at §24.2(a)(3) includes appraisal performance requirements that are an inherent part of this section.

The term “Federal and federally-assisted program or project” is used to better identify the type of appraisal practices that are to be referenced and to differentiate them from the private sector, especially mortgage lending, appraisal practice.

*Section 24.103(a) Appraisal requirements.* The first sentence instructs readers that requirements for appraisals for Federal and federally-assisted programs or projects are located in 49 CFR part 24. These are the basic appraisal requirements for Federal and federally-assisted programs or projects. However, Agencies may enhance and expand on them, and there may be specific project or program legislation that references other appraisal requirements.

These appraisal requirements are necessarily designed to comply with the Uniform Act and other Federal eminent domain based appraisal requirements. They are also considered to be consistent with Standards Rules 1, 2, and 3 of the 2004 edition of the USPAP. Consistency with USPAP has been a feature of these appraisal requirements since the beginning of USPAP. This “consistent” relationship was more formally recognized in OMB Bulletin 92–06. While these requirements are considered consistent with USPAP, neither can supplant the other; their provisions are neither identical, nor interchangeable. Appraisals performed for Federal and federally-assisted real property acquisition must follow the requirements in this regulation. Compliance with any other appraisal requirements is not the purview of this regulation. An appraiser who is committed to working within the bounds of USPAP should recognize that compliance with both USPAP and these requirements may be achieved by using the Supplemental Standards Rule and the Jurisdictional Exception Rule of USPAP, where applicable.

The term “scope of work” defines the general parameters of the appraisal. It reflects the needs of the Agency and the requirements of Federal and federally-assisted program appraisal practice. It should be developed cooperatively by the assigned appraiser and an Agency official who is competent to both represent the Agency's needs and respect valid appraisal practice. The scope of work statement should include the purpose and/or function of the appraisal, a definition of the

estate being appraised, and if it is fair market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work should consider the specific requirements in 49 CFR 24.103(a)(2)(i) through (v) and address them as appropriate.

*Section 24.103(a)(1).* The appraisal report should identify the items considered in the appraisal to be real property, as well as those identified as personal property.

*Section 24.103(a)(2).* All relevant and reliable approaches to value are to be used. However, where an Agency determines that the sales comparison approach will be adequate by itself and yield credible appraisal results because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach. This should be reflected in the scope of work.

*Section 24.103(b) Influence of the project on just compensation.* As used in this section, the term “project” means an undertaking which is planned, designed, and intended to operate as a unit.

When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

*Section 24.103(d)(1).* The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

*Section 24.104 Review of appraisals.* The term “review appraiser” is used rather than “reviewing appraiser,” to emphasize that “review appraiser” is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal Agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires more. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the Agency's real property valuation needs and the appraiser.

Agency review appraisers typically perform a role greater than technical appraisal review. They are often involved in early project development. Later they may be involved in devising the scope of work statements and participate in making appraisal assignments to fee and/or staff appraisers. They are also mentors and technical advisors, especially on Agency policy and requirements, to appraisers, both staff and fee. Additionally, review appraisers are frequently technical advisors to other Agency officials.

*Section 24.104(a).* This paragraph states that the review appraiser is to review the appraiser's presentation and analysis of market information and that it is to be reviewed against §24.103 and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal review is to be a technical review by an appropriately qualified review appraiser. The qualifications of the review appraiser and the level of explanation of the basis for the review appraiser's recommended (or approved) value depend

on the complexity of the appraisal problem. If the initial appraisal submitted for review is not acceptable, the review appraiser is to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's development of an acceptable appraisal.

In doing this, the review appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself.

If the Agency intends that the staff review appraiser approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), or establish the amount the Agency believes is just compensation, she/he must be specifically authorized by the Agency to do so. If the review appraiser is not specifically authorized to approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), or establish the amount believed to be just compensation, that authority remains with another Agency official.

*Section 24.104(b).* In developing an independent approved or recommended value, the review appraiser may reference any acceptable resource, including acceptable parts of any appraisal, including an otherwise unacceptable appraisal. When a review appraiser develops an independent value, while retaining the appraisal review, that independent value also becomes the approved appraisal of the fair market value for Uniform Act Section 301(3) purposes. It is within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on the property.

*Section 24.104(c).* Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of §24.103. An approved appraisal is the one acceptable appraisal that is determined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one approved appraisal.

At the Agency's discretion, for a low value property requiring only a simple appraisal process, the review appraiser's recommendation (or approval), endorsing the appraiser's report, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

*Section 24.106(b). Expenses incidental to transfer of title to the agency.* Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. Such expenses must be reasonable and necessary.

#### Subpart C—General Relocation Requirements

*Section 24.202 Applicability and Section 205(c) Services to be provided.* In extraordinary circumstances, when a displaced person is not readily accessible, the Agency must make a good faith effort to comply with these sections and document its efforts in writing.

*Section 24.204 Availability of comparable replacement dwelling before displacement.*

*Section 24.204(a) General.* This provision requires that no one may be required to move from a dwelling without a comparable replacement dwelling having been made available. In addition, §24.204(a) requires that, “where possible, three or more comparable replacement dwellings shall be made available.” Thus, the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

*Section 24.205 Relocation assistance advisory services.* Section 24.205(c)(2)(ii)(D) emphasizes that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

*Section 24.206 Eviction for cause.* An eviction related to non-compliance with a requirement related to carrying out a project (e.g., failure to move or relocate when instructed, or to cooperate in the relocation process) shall not negate a person's entitlement to relocation payments and other assistance set forth in this part.

*Section 24.207 General Requirements—Claims for relocation payments.* Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated nonresidential moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in §24.301(d)(1).

While §24.207(f) prohibits an Agency from proposing or requesting that a displaced person waive his or her rights or entitlements to relocation assistance and payments, an Agency may accept a written statement from the displaced person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Any such written statement must clearly show that the individual knows what they are entitled to receive (a copy of the Notice of Eligibility which was provided may serve as documentation) and their statement must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed and dated and may not be coerced by the Agency.

Subpart D—Payment for Moving and Related Expenses

*Section 24.301. Payment for Actual Reasonable Moving and Related Expenses.*

*Section 24.301(e) Personal property only.* Examples of personal property only moves might be: personal property that is located on a portion of property that is being acquired, but the business or residence will not be taken and can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired.

For a nonresidential personal property only move, the owner of the personal property has the options of moving the personal property by using a commercial mover or a self-move.

If a question arises concerning the reasonableness of an actual cost move, the acquiring Agency

may obtain estimates from qualified movers to use as the standard in determining the payment.

*Section 24.301 (g)(14)(i) and (ii).* If the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists, and shall not include the cost of code-required betterments or upgrades that may apply at the replacement site. As prescribed in the regulation, the allowable in-place value estimate (§24.301(g)(14)(i)) and moving cost estimate (§24.301(g)(14)(ii)) must reflect only the “as is” condition and installation of the item at the displacement site. The in-place value estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site; or include installation costs for machinery or equipment that is not operable or not installed at the displacement site.

*Section 24.301(g)(17) Searching expenses.* In special cases where the displacing Agency determines it to be reasonable and necessary, certain additional categories of searching costs may be considered for reimbursement. These include those costs involved in investigating potential replacement sites and the time of the business owner, based on salary or earnings, required to apply for licenses or permits, zoning changes, and attendance at zoning hearings. Necessary attorney fees required to obtain such licenses or permits are also reimbursable. Time spent in negotiating the purchase of a replacement business site is also reimbursable based on a reasonable salary or earnings rate. In those instances when such additional costs to investigate and acquire the site exceed \$2,500, the displacing Agency may consider waiver of the cost limitation under the §24.7, waiver provision. Such a waiver should be subject to the approval of the Federal-funding Agency in accordance with existing delegation authority.

*Section 24.303(b) Professional Services.* If a question should arise as to what is a “reasonable hourly rate,” the Agency should compare the rates of other similar professional providers in that area.

*Section 24.305 Fixed Payment for Moving Expenses—Nonresidential Moves.*

*Section 24.305(d) Nonprofit organization.* Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items as well as fundraising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public Agencies.

*Section 24.305(e) Average annual net earnings of a business or farm operation.* If the average annual net earnings of the displaced business, farm, or nonprofit organization are determined to be less than \$1,000, even \$0 or a negative amount, the minimum payment of \$1,000 shall be provided.

*Section 24.306 Discretionary Utility Relocation Payments.* Section 24.306(c) describes the issues that the Agency and the utility facility owner must agree to in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR part 645, subpart A, Utility Relocations,

Adjustments and Reimbursement, should be followed.

#### Subpart E—Replacement Housing Payments

##### *Section 24.401 Replacement Housing Payment for 180-day Homeowner-Occupants.*

*Section 24.401(a)(2).* An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances causes a delay in occupying a decent, safe, and sanitary replacement dwelling.

*Section 24.401(c)(2)(iii) Price differential.* The provision in §24.401(c)(2)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

*Section 24.401(d) Increased mortgage interest costs.* The provision in §24.401(d) sets forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the “buydown.”

The Agency must know the remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

#### Sample Computation

-----		
-----		
Old Mortgage:		
Remaining Principal Balance.....		\$50,000
Monthly Payment (principal and interest).....		\$458.22
Interest rate (percent).....		7
New Mortgage:		
Interest rate (percent).....		10
Points.....		3
Term (years).....		15
-----		

Remaining term of the old mortgage is determined to be 174 months. Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee. However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of \$458.22 at 10% = \$42,010.18.

-----  
 -----  
 Calculation:

Remaining Principal Balance.....	\$50,000.00
Minus Monthly Payment (principal and interest).....	-42,010.18
	-----
Increased mortgage interest costs.....	7,989.82
3 points on \$42,010.18.....	1,260.31
	-----
Total buydown necessary to maintain payments at \$458.22/month.....	9,250.13

-----

If the new mortgage actually obtained is less than the computed amount for a new mortgage (\$42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were \$35,000, the buydown payment would be \$7,706.57 (\$35,000 divided by \$42,010.18 = .8331; \$9,250.13 multiplied by .83 = \$7,706.57).

The Agency is obligated to inform the displaced person of the approximate amount of this payment and that the displaced person must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The Agency must advise the displaced person of the interest rate and points used to calculate the payment.

*Section 24.402 Replacement Housing Payment for 90-day Occupants*

*Section 24.402(b)(2) Low income calculation example.* The Uniform Act requires that an eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment calculated in accordance with §24.402(b). One factor in this calculation is to determine if a displaced person is “low income,” as defined by the U.S. Department of Housing and Urban Development’s annual survey of income limits for the Public Housing and Section 8 Programs. To make such a determination, the Agency must: (1) Determine the total number of members in the household (including all adults and children); (2) locate the appropriate table for income limits applicable to the Uniform Act for the state in which the displaced residence is located (found at: <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>); (3) from the list of local jurisdictions shown, identify the appropriate county, Metropolitan Statistical Area (MSA)\*, or Primary Metropolitan Statistical Area (PMSA)\* in which the displacement property is located; and (4) locate the appropriate income limit in that jurisdiction for the size of this displaced person/family. The income limit must then be compared to the household income (§24.2(a)(15)) which is the gross annual income received by the displaced family, excluding income from any dependent children and full-time students under the age of 18. If the household income for the eligible displaced person/family is less than or equal to the income limit, the family is considered “low income.” For example:

Tom and Mary Smith and their three children are being displaced. The information

obtained from the family and verified by the Agency is as follows:

Tom Smith, employed, earns \$21,000/yr.

Mary Smith, receives disability payments of \$6,000/yr.

Tom Smith Jr., 21, employed, earns \$10,000/yr.

Mary Jane Smith, 17, student, has a paper route, earns \$3,000/yr. (Income is not included because she is a dependent child and a full-time student under 18)

Sammie Smith, 10, full-time student, no income.

Total family income for 5 persons is:  $\$21,000 + \$6,000 + \$10,000 = \$37,000$

The displacement residence is located in the State of Maryland, Caroline County. The low income limit for a 5 person household is: \$47,450. (2004 Income Limits)

This household is considered “low income.”

\* A complete list of counties and towns included in the identified MSAs and PMSAs can be found under the bulleted item “Income Limit Area Definition” posted on the FHWA’s Web site at: <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>.

*Section 24.402(c) Downpayment assistance.* The downpayment assistance provisions in §24.402(c) limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance that exceeds the computed rental assistance payment, up to the \$5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing Agency should develop a policy that affords equal treatment for displaced persons in like circumstances and this policy should be applied uniformly throughout the Agency’s programs or projects.

For the purpose of this section, should the amount of the rental assistance payment exceed the purchase price of the replacement dwelling, the payment would be limited to the cost of the dwelling.

*Section 24.404 Replacement Housing of Last Resort.*

*Section 24.404(b) Basic rights of persons to be displaced.* This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under §24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of “owner of a dwelling” at §24.2(a)(20). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or

rental assistance.

*Section 24.404(c) Methods of providing comparable replacement housing.* This Section emphasizes the use of cost effective means of providing comparable replacement housing. The term “reasonable cost” is used to highlight the fact that while innovative means to provide housing are encouraged, they should be cost-effective. Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller, decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

#### **Appendix B to Part 24—Statistical Report Form**

This Appendix sets forth the statistical information collected from Agencies in accordance with §24.9(c).

##### *General*

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally-assisted project or program subject to the provisions of the Uniform Act. If the exact numbers are not easily available, an Agency may provide what it believes to be a reasonable estimate.

2. *Report period.* Activities shall be reported on a Federal fiscal year basis, *i.e.*, October 1 through September 30.

3. *Where and when to submit report.* Submit a copy of this report to the lead Agency as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15. Lead Agency address: Federal Highway Administration, Office of Real Estate Services (HEPR), Room 3221, 400 7th Street SW., Washington, DC 20590.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts of this section A, B

and C to the nearest dollar.

*6. Regulatory references.* The references in Parts A, B, C and D of this section indicate the subpart of the regulations pertaining to the requested information.

**Part A. Real property acquisition under The Uniform Act**

*Line 1.* Report all parcels acquired during the report year where title or possession was vested in the Agency during the reporting period. The parcel count reported should relate to ownerships and not to the number of parcels of different property interests (such as fee, perpetual easement, temporary easement, etc.) that may have been part of an acquisition from one owner. For example, an acquisition from a property that includes a fee simple parcel, a perpetual easement parcel, and a temporary easement parcel should be reported as 1 parcel not 3 parcels. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.)

*Line 2.* Report the number of parcels reported on Line 1 that were acquired by condemnation. Include those parcels where compensation for the property was paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency through condemnation authority.

*Line 3.* Report the number of parcels in Line 1 acquired through administrative settlement where the purchase price for the property exceeded the amount offered as just compensation and efforts to negotiate an agreement at that amount have failed.

*Line 4.* Report the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency in Line 1.

**Part B. Residential Relocation Under the Uniform Act**

*Line 5.* Report the number of households who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling. The term “households” includes all families and individuals. A family shall be reported as “one” household, *not* by the number of people in the family unit.

*Line 6.* Report the total amount paid for residential moving expenses (actual expense and fixed payment).

*Line 7.* Report the total amount paid for residential replacement housing payments including payments for replacement housing of last resort provided pursuant to §24.404 of this part.

*Line 8.* Report the number of households in Line 5 who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling as part of last resort housing assistance.

*Line 9.* Report the number of tenant households in Line 5 who were permanently

displaced during the fiscal year by project or program activities, and who purchased and moved to their replacement dwelling using a downpayment assistance payment under this part.

*Line 10.* Report the total sum costs of residential relocation expenses and payments (excluding Agency administrative expenses) in Lines 6 and 7.

#### Part C. Nonresidential Relocation Under the Uniform Act

*Line 11.* Report the number of businesses, nonprofit organizations, and farms who were permanently displaced during the fiscal year by project or program activities and moved to their replacement location. This includes businesses, nonprofit organizations, and farms, that upon displacement, discontinued operations.

*Line 12.* Report the total amount paid for nonresidential moving expenses (actual expense and fixed payment.)

*Line 13.* Report the total amount paid for nonresidential reestablishment expenses.

*Line 14.* Report the total sum costs of nonresidential relocation expenses and payments (excluding Agency administrative expenses) in Lines 12 and 13.

#### Part D. Relocation Appeals

*Line 15.* Report the total number of relocation appeals filed during the fiscal year by aggrieved persons (residential and nonresidential).

FEDERAL FISCAL YEAR ENDING SEPT. 30, 20 \_\_\_\_\_

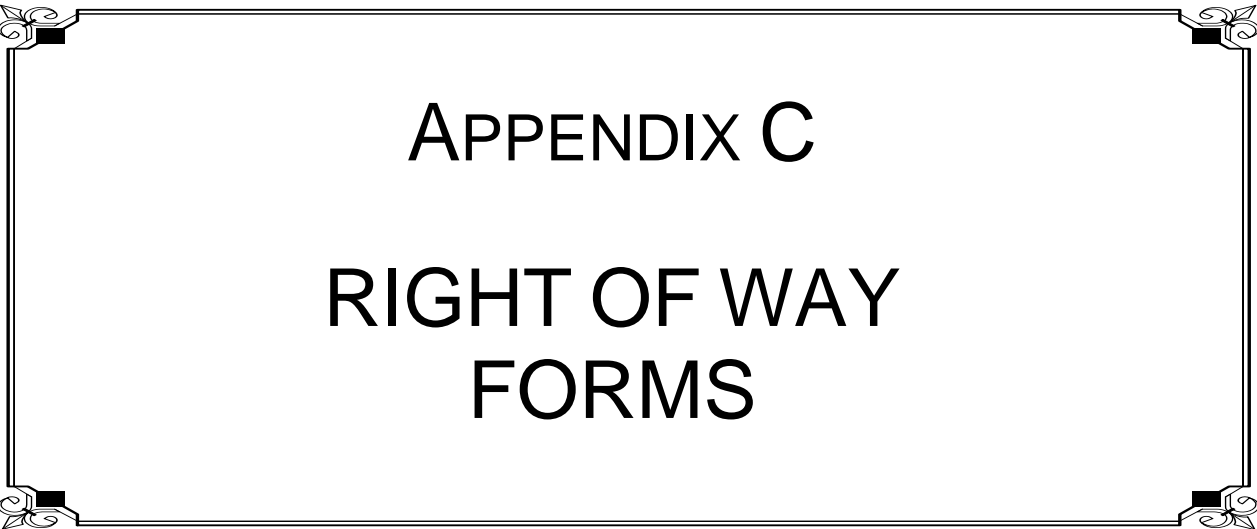
REPORTING AGENCY: \_\_\_\_\_

STATE: \_\_\_\_\_

CITY/COUNTY (For Local Government Agencies): \_\_\_\_\_

FEDERAL FUNDING AGENCY: \_\_\_\_\_

<b>PART A. REAL PROPERTY ACQUISITION UNDER THE UNIFORM ACT</b>	
1) Total Number of Parcels Acquired (Ownerships)	
2) Number of Parcels in Line 1 Acquired by Condemnation	
3) Number of Parcels in Line 1 Acquired by Administrative Settlement (Above initial offer -see 24.102(i))	
4) Compensation - Total Costs (Including 24.106; Excluding appraisal costs, negotiator fees and other administrative expenses)	
<b>PART B. RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT</b>	
5) Total Number of Residential Displacements (Households)	
6) Residential Moving Payments - Total Costs	
7) Replacement Housing Payments - Total Costs	
8) Number of Last Resort Housing Displacements in Line 5 (Households)	
9) Number of Tenants converted to Homeowners in Line 5 (Households using 24.402(c))	
10) Total Costs for Residential Relocation Expenses and Payments (Sum of lines 6 and 7; excluding Agency Administrative Costs)	
<b>PART C. NONRESIDENTIAL RELOCATION UNDER THE UNIFORM ACT</b>	
11) Total Number of NonResidential Displacements	
12) NonResidential Moving Payments - Total Costs (Including 24.305)	
13) NonResidential Reestablishment Payments - Total Costs	
14) Total Costs for Nonresidential Relocation Expenses and Payments (Sum of lines 12 and 13; excluding Agency Administrative Costs)	
<b>PART D. RELOCATION APPEALS UNDER THE UNIFORM ACT</b>	
15) Total Number of Relocation Appeals (Residential & NonResidential)	



# APPENDIX C

## RIGHT OF WAY FORMS

MAINE RIGHT OF WAY MANUAL

*December 2010*



<b><u>Table of Contents</u></b>		
<b><u>Section</u></b>		<b><u>Page</u></b>
1	Administration (AD)	C(1)
2	Mapping and Research (MR)	C(2)
3	Valuation (VL)	C(3)
4	Acquisition (AQ)	C(4)
5	Relocation (RA)	C(5)
6	Property Management (PM)	C(7)



**Section 1 — R/W Administration (AD) Forms**

<b>Number</b>	<b>Title</b>
AD-1a,b	Unsettled Owner Notification of Condemnation and Transmittal of Payment
AD-2a,b	Settled Owner Notification of Condemnation and Transmittal of Payment
AD-3a	Class I Right of Way Certificate
AD-3b	Class II & III Right of Way Certificate
AD-4	Real Property Acquisition Status Report
AD-5	Notice of Referral to State Claims Commission
AD-6a	Check Transmittal - Settlement Agreement
AD-6b	Application for Duplicate Check
AD-6c	Check Transmittal - Relocation Benefits
AD-6d	Check Transmittal - Replacement Check
AD-6e	Check Transmittal - Negotiated Settlement
AD-6f	Check Cancellation Request Letter
AD-6g	Check Transmittal - Date Extension
AD-6h	Check Extension Request
AD-6i	Check Transmittal - Option to Work Permit
AD-6j	Request to Reissue Check
<del>AD-7</del>	<del>Request for Referral of Parcel to State Claims Commission</del>
AD-8	Transmittal of Payment Letter (Settled Cases)
AD-9	Notice to Property Owner of Referral to State Claims (Unsettled Parcels)
AD-10	Notice to Property Owner of Referral to State Claims at Owner's Request (Unsettled Parcels)
AD-11	Transmittal Memo to SCC of Notice of Request for Referral, Statement of Damages, Notice of Taking
AD-12	Memo to SCC of Settlement of Parcel and Withdrawal From Petition
AD-13	Notice to State Claims Commission of Additional Parcel for Hearing

[illegible]


**Section 3 — R/W Valuation (VL) Forms**

<b>Number</b>	<b>Title</b>
VL-1	Assessment and Area Record
VL-2	Town Data Template
VL-3	Sale Data Form
VL-4a	Master Waiver Spreadsheet
VL-4b	Administrative Acquisition Worksheet
VL-5	Value Finding Format
VL-6	Purpose of the Appraisal
VL-7	Invitation to Accompany the Appraiser Letter
VL-8	Short Format Appraisal Setup
VL-9a	Value Finding Certificate
VL-9b	Short Form Certificate
VL-9c	Detailed Narrative Certificate
<del>VL-10</del>	<del>House Inspection Form</del>
VL-11	Sales Check sheet
VL-12	Short Form Check Sheet
VL-13	Detailed Narrative Check Sheet
VL-14	Tax Pro Ration Sheet
VL-15	Review Determination and Approval (A-5)
VL-16a	Statement of Determined Damages-No Severance (A-7)
VL-16b	Statement of Determined Damages-Severance (A-6)
VL-17	Incidental Right of Way Cost Estimate
VL-18	Estimated Cost of Right of Way
VL-20	Valuation Specifications
VL-21	Review Appraiser's Report Memo
VL-22	Minimum Payment Worksheet
VL-23	Donation and Waiver of Just Compensation

**Section 4 — R/W Acquisition (AQ) Forms**

<b>Number</b>	<b>Title</b>
AQ-1	Offer Letter – Detailed
AQ-2	Offer Letter – Simple
AQ-3	Administrative Settlement Form
AQ-4	Work Permit
AQ-5	Negotiator's Certificate
AQ-6	Negotiator's Statement
AQ-7	Settlement Agreement
AQ-8	Administrative Acquisition Offer Letter & Settlement Agreement
AQ-9	After Condemnation Settlement Agreement
AQ-10	After Condemnation Appeal Request
AQ-11	Option Agreement
AQ-12	Property Owners Request for Deferral of Hearing
<del>AQ-13</del>	<del>Notice of Request for Referrals to State Claims Commission</del>
AQ-14	Owner Contact Report
AQ-15	Owner's Offer-Assent
<del>AQ-16</del>	<del>Taxpayer ID # Certificate (IRS W-9)</del>
<del>AQ-17</del>	<del>Appraisal Waiver Form</del>
AQ-18	Application for Pin Replacement

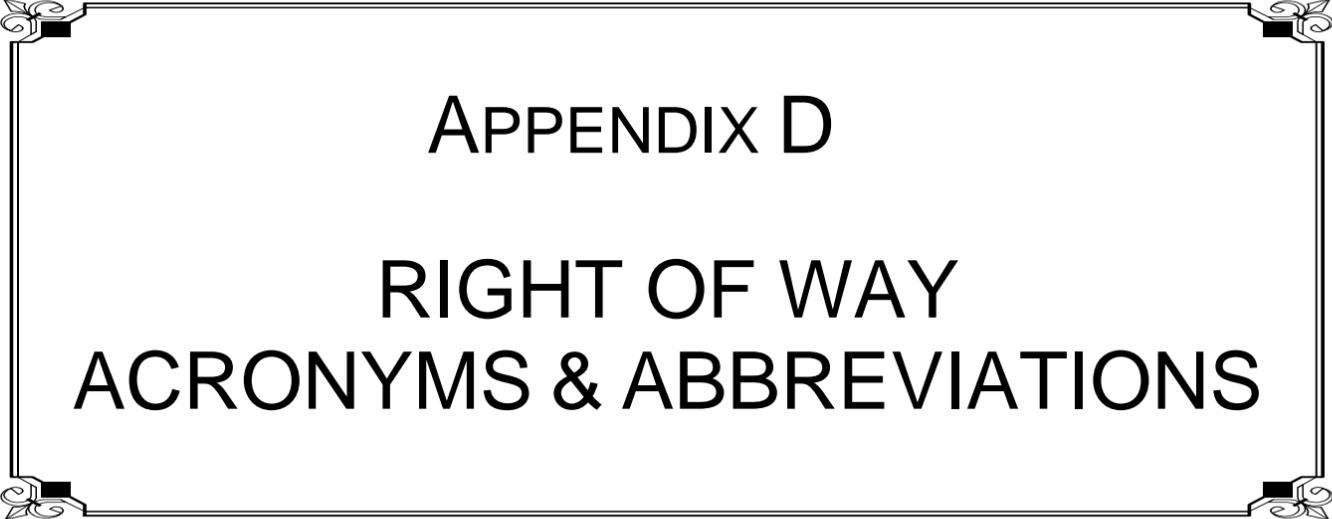
### Section 5 — R/W Relocation (RA) Forms

Number	Title
RA-0	Residential Relocation Assistance Questionnaire
RA-1	Displacee Inventory
RA-2	Master Inventory
RA-3	RHP - Single Family
RA-4	RHP - Apt-Multi Family
RA-5	RHP Business
RA-6	RHP Master Inventory
RA-7	Summary Public Hearing
RA-8	Relocation Assistance Plan
RA-9	Field Worksheet
RA-10	Estimated Costs
RA-11	Residential Questionnaire
RA-12	Business Relocation Needs & Preferences Questionnaire
RA-13	Advertising Sign Cost & Relocation Data
RA-14	Displacee Master Relocation Record
RA-15	Rental Comparable
RA-16	Initial Relocation Notice
RA-16B	Initial Relocation Notice (Business)
RA-16R	Initial Relocation Notice Letter
RA-17	Relocation Payment Summary
RA-18	Move Payment Summary
RA-19	RHP Payment Summary
RA-20	Contact Sheet
RA-21	Notice of Intent to Acquire
RA-21PP	Notice of Intent to Acquire Personal Property
RA-22	Small Business Adm.
RA-23	Comparable Replacement Housing Notice
RA-24	Business Fixture Notice
RA-25	Replacement Housing Estimate – Tenant
RA-26	Replacement Housing Estimate Data
RA-27	Replacement Rental / Down Payment Estimate Data
RA-28	RHP Tenant
RA-29	Comparable Grid
RA-30	Notice of Eligibility
RA-31	90-Day Notice
RA-32	30-Day Notice
RA-33	Replacement Rental Price List
RA-34	Available Replacement Housing Price List

Number	Title
RA-35	Businesses – For Sale or Rent
<del>RA-36</del>	<del>No Form 36 found</del>
RA-37	General Advisory, Relocation Assistance Offer
RA-38	Reestablishment Claim
RA-39	Moving Expense Finding - Business
RA-40	Fixed Moving Expense Schedule
RA-41	Personal Property Agreement
RA-41a	Personal Property Relocation Eligibility Letter
RA41b	Personal Property Relocation Bid Amount Approval Letter
RA-42	Referral to Commissioner /State Claims Commission Appeal
RA-43	Determination of Net Earnings
RA-44	Residential Occupants Moving Expense Claim
RA-45	Advance Payment Residential Moving Expense Claim
RA-46	Moving Expense – Business, Farms, Non Profit Organizations
RA-46-a	Advance Payment Moving Expense. Business, Farm, Non-Profit Organization
RA-47	Moving Expense –Personal Property Only
<del>RA-47a</del>	<del>Moving Expense – Advertising Signs</del>
RA-48	RHP Notice / Application
RA-48A	Advance Replacement Housing Notice-Application
RA-49	RHP Notice / Application – Rental or Down Payment
RA-50	RHP Notice / Application – Mobile Home
RA-51	RHP Notice / Application – Owner Retention
RA-52	Increased Interest Payment Application
RA-53	Incidental Expense Payment Application
RA-54	Statement of Eligibility - RHP
RA-55	Escrow Payment
RA-56	Escrow Agreement
<del>RA-57</del>	<del>Petition to State Claims Commission</del>
<del>RA-58</del>	<del>Relocation Status Summary Report</del>
RA-59	Decent, Safe and Sanitary Inspection Report
RA-60	Maine UA Income Limits

**Section 6 — R/W Property Management (PM) Forms**

<b>Number</b>	<b>Title</b>
PM-1	Memorandum of Agreement
PM-2	Occupancy Agreement
PM-3	Property Management (Status Summary Sheet)
PM-4	Excess Property Inquiry Checksheet
PM-5	Status & Disposition of Buildings
PM-6	Lease



APPENDIX D

RIGHT OF WAY  
ACRONYMS & ABBREVIATIONS

MAINE RIGHT OF WAY MANUAL

*December 2010*



## APPENDIX D

# ACRONYMS AND ABBREVIATIONS

1. Administrative Offer Worksheet – Form VL-4 (AOW). It is used to establish value in the administrative acquisition process.
2. Administrative Policy Memorandum (APM). Departmental directives.
3. Bureau of Project Development (BPD). Organizational Unit of MaineDOT having general responsibility for preconstruction project activities, including right of way.
4. Categorical Exclusion (CE). Lowest Federal environmental impact classification. Detailed definition is at 23 **CFR** 771.117.
5. **Code of Federal Regulations (CFR)**. Rules published by agencies of the Federal government that are necessary to implement provisions of Federal law.
6. Decent, Safe and Sanitary (DS&S). Required health and safety requirements of replacement housing under the relocation program. See Section 6-1.06 of this *Manual*.
7. Environmental Assessment (EA). Environmental study undertaken by the Department to clearly establish environmental impact of a proposed project. The EA is defined at 23 **CFR** 771.119.
8. Environmental Impact Statement (EIS). A comprehensive study of social, environmental and economic impacts of a proposed project and evaluation of all reasonable alternatives. The EIS is described fully at 23 **CFR** 771.123 and 125.
9. Federal Highway Administration (FHWA). Federal agency under the U.S. Department of Transportation having responsibility for oversight and coordination of the Federal-Aid Highway Program.
10. Finding of No Significant Impact (FONSI). Finding by FHWA subsequent to an EA, that a proposed project will not have a significant effect on the environment. The FONZI is fully described at 23 **CFR** 771.121.
11. Local Public Agency (LPA). Includes all jurisdictions of local government.
12. Last Resort Housing (LRH). Program of providing replacement housing for displacees when it is not available on the market or is not available within normal relocation program benefits. LRH is fully described at Section 6-10 of this *Manual*.
13. MaineDOT Bureau of Maintenance and Operations (M&O). Right of way coordinates closely with M&O in managing right of way after construction. See Chapter 7 of this *Manual*.

14. Maine Department of Transportation (MaineDOT).
15. Mortgage Interest Differential (MID). Relocation benefit which compensates for the displacee's loss of a mortgage having a favorable interest rate. See Section 6-7.04.
16. Maine Revised Statutes Annotated (MRSA). Title 23 includes provisions relating to right of way.
17. Names and Addresses List (N&A List). Property ownership information compiled early in the right of way process. See Sections 2-2.01 and 2-3.01.
18. National Environmental Policy Act (NEPA). Comprehensive Federal law providing for evaluation of environmental impacts of federally assisted programs and projects and measures to protect and enhance the environment.
19. National Historic Preservation Act (NHPA). Comprehensive Federal law protecting America's historic resources.
20. Property Owner Report (Form MR-1) (POR). Assembly of property information including ownership (from N&A List) land use and property improvements. See Section 2-3.03.
21. Plans, Specifications and Estimate (PS & E). Assembly of documents necessary for submitting a highway construction project for bid.
22. Quality Assurance/Quality Control (QA/QC). Activities performed to assure a continuing high level of quality in right of way. See Chapter 10.
23. Request for Proposals (RFP). Advertised call for submission of proposals to performance of work under contract.
24. Request for Qualifications (RFQ). Advertised call for submission of consultant qualifications for performance of specific professional services.
25. Replacement Housing Payment (RHP). Financial benefit to residential owner displacee that enables the displacee to purchase a comparable replacement dwelling. See Section 6-7.
26. Rent Supplement (RS). Financial benefit to residential tenant displacee that enables the displacee to rent a comparable replacement dwelling. See Section 6-8.
27. Right of Way (R/W).
28. RMS. Realty Management System. A proposed database to better manage the myriad of data created in the right of way/property process.
29. State Claims Commission (SCC). State Board established by the Maine Legislature to make awards of just compensation in highway condemnations. The purposes and powers of the SCC are set forth at 23 **MRSA** 151 and 152.

30. **Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21)**. Federal law authorizing funding for surface transportation programs including highways, and setting forth national transportation goals.
31. **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (as amended)**. Federal law defining uniform policies for real property acquisition, and declaring a program of assistance and financial benefits to persons (residents, businesses, farms, non profits) displaced as a result of any Federally funded program or project.
32. **United States Code (USC)**. Codification of all Federal laws under 49 Titles. Right of way activities are found in Title 23 – Highways, and in Title 49, Transportation.
33. **Uniform Standards of Professional Appraisal Practice (USPAP)**. Appraisal standards established by the Appraisal Standards Board of the Appraisal Foundation. The USPAP is a national standard binding on State certified appraisers in all States.

